

Volume 8

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. CR 16-00462 CRB
)	
SUSHOVAN TAREQUE HUSSAIN,)	
)	
Defendant.)	
)	

San Francisco, California

Thursday, March 8, 2018

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

ALEX G. TSE
Acting United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

**BY: ROBERT S. LEACH
ADAM A. REEVES
WILLIAM FRENTZEN
ASSISTANT UNITED STATES ATTORNEYS**

For Defendant:

KEKER & VAN NEST
633 Battery Street
San Francisco CA 94111

**BY: JOHN W. KEKER
JAN NIELSEN LITTLE
BROOK DOOLEY
KATE LAZARUS
NIC MARAIS
ATTORNEYS AT LAW**

Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Pamela Batalo, CSR No. 3593, FCRR
Official Reporters

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9:04 a.m.

P R O C E E D I N G S

---000---

(Proceedings were heard in the presence of the jury:)

THE COURT: Please be seated.

Let the record reflect all jurors are present, the parties are present.

Good morning, ladies and gentlemen. Again, thank you for being so prompt. The Court and the parties really appreciate it.

Let me just go over scheduling.

Have a seat, sir, if you will.

The schedule is, as you know, we have a full day today and we'll have close -- not tomorrow. Okay. I've got to get this all straight in my own mind. Not tomorrow.

Monday we are meeting -- we'll probably adjourn around 1:00, 1:15, 1:00, right around there.

Then nothing Tuesday, nothing Wednesday, nothing Thursday; but Friday we are meeting, which is a change in how we originally set up, and I don't want to lose a whole day of testimony.

So there we are. If there are other scheduling things, I'll be pleased to address them.

Okay. So let's continue with the examination.

\\

TRUITT - DIRECT / LEACH

DAVID MORELAND TRUITT,

called as a witness for the Government, having been previously
duly sworn, testified further as follows:

THE COURT: I remind you you're under oath.

MR. LEACH: Thank you, Your Honor.

DIRECT EXAMINATION (resumed)

BY MR. LEACH:

Q. Good morning, Mr. Truitt.

A. Good morning.

Q. When we broke yesterday, we were discussing the
\$55 million sale of MicroLink to Autonomy. Do you recall that?

A. Yes, sir.

Q. And do you also recall a \$10 million purchase of Autonomy
software by MicroTech for resale to Discover Technologies?

A. Yes.

Q. And if we could please display, Ms. Margen, Exhibit 429
and Exhibit 420 at the same time.

Let me draw your attention to the right side of the
screen, Mr. Truitt. It's a little hard to make out there, but
is this the order by MicroTech for certain Autonomy software?

A. Yes.

Q. What, again, is the software being licensed?

A. Right -- the right side shows it's IDOL Retrieval Lite, so
it's a lite version of the IDOL product.

Q. So it's certain functionality within the IDOL product; is

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1 that fair?

2 **A.** Yes.

3 **Q.** And that functionality is Categorization Clustering,
4 Retrieval Lite, and SharePoint Connector?

5 **A.** Right.

6 **Q.** Did you have discussions with Mr. Joel Scott about what
7 Discover Tech had wanted to license as part of this software
8 purchase?

9 **A.** Yes. And I think that was indicated in the initial
10 purchase orders that went back and forth between Autonomy with
11 Mr. Scott and myself, and that was full -- it was ControlPoint
12 but it was also shipping with IDOL -- full IDOL.

13 **Q.** If we could please look at Exhibit 420. This is the
14 \$2.3 million order from Autonomy to MicroLink. What is the
15 software that is purportedly the subject of this purchase
16 order?

17 **A.** Sorry. Do I have that here?

18 **Q.** I think it's on the screen, sir. I think it's already in
19 evidence.

20 **A.** (Witness examines document.) Can you repeat the question?

21 **Q.** What is the software that is the subject of the
22 \$2.3 million order reflected in Exhibit 420?

23 **A.** IDOL server with Profiling.

24 **Q.** If we could zoom back out to Exhibit 420, please?

25 **MR. KEKER:** Excuse me, Your Honor. We don't have a

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1 record of 429 in evidence. We have no objection, but I want to
2 make sure it's in.

3 **THE COURT:** I think I did admit it but if I didn't,
4 429 admitted.

5 **MR. KEKER:** And 420 as well.

6 **THE COURT:** I'm sorry?

7 **MR. KEKER:** And 420 as well. We have no objection to
8 that either.

9 **THE COURT:** 420 is also admitted.

10 **THE CLERK:** They were admitted yesterday.

11 **THE COURT:** Pardon?

12 **THE CLERK:** Yesterday.

13 **THE COURT:** Yes. Okay. So thank you. Those
14 documents are in evidence.

15 **MR. LEACH:** Thank you, Your Honor.

16 If we could zoom out, please, to the first page of
17 Exhibit 420.

18 **Q.** Mr. Truitt, I think you testified yesterday that you did
19 not agree to this \$2.3 million order?

20 **A.** That's correct.

21 **Q.** Did you authorize anybody to agree to this \$2.3 million
22 order?

23 **A.** I did not.

24 **Q.** Did anyone at MicroLink, other than you, have authority to
25 agree to a multimillion-dollar purchase order?

1 A. No.

2 Q. Did MicroLink ever deliver Profiling software to Discover
3 Technologies?

4 A. No.

5 Q. Did Discover Technologies ever pay MicroLink for this
6 Profiling software?

7 A. No.

8 Q. Did MicroLink ever ask Discover Tech for payment for this
9 \$2.3 million worth of software?

10 A. No.

11 Q. When did you first learn of this \$2.3 million order?

12 A. My first recollection of it was preparing for a meeting
13 with yourself. I was going through a spreadsheet with
14 Mr. Rizek, who is our CFO, and we were looking at a spreadsheet
15 similar to what you showed earlier, which had a list of
16 outstanding orders, and I asked him what the \$2.3 million order
17 was, and that's when I first recall it.

18 Q. Were you surprised by it?

19 A. I was.

20 Q. Going back to the 10 million -- strike that.

21 If you could, please, look at what has been marked as
22 Exhibit 2784. It's right in front of you, sir.

23 A. (Witness examines document.)

24 Q. Is this a true and correct copy of a closing statement
25 summarizing some of the money flow for the MicroLink

1 acquisition?

2 **A.** Yes, it is.

3 **Q.** Is that your signature on page 4 of the exhibit?

4 **MR. KEKER:** I don't have 274.

5 **THE COURT:** 2784.

6 **THE WITNESS:** Yes, it is my signature.

7 **MR. KEKER:** Sorry.

8 **THE COURT:** Admitted.

9 (Trial Exhibit 2784 received in evidence)

10 **BY MR. LEACH:**

11 **Q.** Do you see up at the top the date January 4th, 2010,
12 Mr. Truitt?

13 **A.** Yes, I do.

14 **Q.** And is that consistent with your memory of when MicroLink
15 was acquired by Autonomy?

16 **A.** Yes, it is.

17 **Q.** Further below there's a purchase price, \$55 million. Do
18 you see that?

19 **A.** I do.

20 **Q.** And the closing payments to sellers, \$48,828,955, what
21 does that represent?

22 **A.** That's what was going to be transferred to our respective
23 bank accounts.

24 **Q.** Please look at page 2. What is the amount of money that
25 was going to you as a result of this sale?

1 A. 39,063,164.

2 Q. What was the amount going to Mr. Wharton?

3 If we could please scroll down just a little bit.

4 A. 9,765,791.

5 Q. Please look at what has been marked as Exhibit 510.

6 A. (Witness examines document.)

7 Q. Is this a true and correct copy of a bank statement for a
8 bank account in your name at M&T Bank?

9 A. Yes, it is.

10 MR. LEACH: Your Honor, I offer Exhibit 510.

11 MR. KEKER: No objection.

12 THE COURT: Admitted.

13 (Trial Exhibit 510 received in evidence)

14 BY MR. LEACH:

15 Q. Mr. Truitt, I draw your attention to the "Account Summary"
16 row in the top portion of this document. This was a bank
17 account that you controlled?

18 A. Yes, that's correct.

19 Q. Okay. What was the beginning balance as of December 23rd,
20 2010?

21 A. Zero.

22 Q. And I draw your attention to the account activity on
23 1/4/10. There appears to be a \$39,063,164 deposit. Do you see
24 that?

25 A. Yes.

1 Q. What does that represent?

2 A. That's the incoming wire from Autonomy to myself.

3 Q. From the sale of MicroLink?

4 A. Correct.

5 Q. Further below there's an outgoing wire transfer on
6 1/5/10 for \$8 million. Do you see that?

7 A. I do.

8 Q. And what is that for?

9 A. That was me wiring funds into my new Discover Technologies
10 bank account to fund Discover, which ultimately we could then
11 purchase that software that we had agreed to buy.

12 Q. So you're transferring some of the proceeds of the
13 MicroLink acquisition to pay for the \$10 million worth of
14 software?

15 A. Correct.

16 Q. Please look at what has been marked as Exhibit 582.

17 A. (Witness examines document.)

18 Q. Is this a true and correct copy of bank records for
19 January 2010 for Discover Technologies?

20 A. Yes, it is.

21 MR. LEACH: Your Honor, I offer Exhibit 582.

22 THE COURT: Admitted.

23 (Trial Exhibit 582 received in evidence)

24 BY MR. LEACH:

25 Q. Up at the top there's a statement summary and account

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1 number ending in 56799, commercial checking. Do you see that,
2 Mr. Truitt?

3 A. Yes, I do.

4 Q. What was the purpose of this account?

5 A. A simple checking account for the new business.

6 Q. Did the new business have any other checking accounts at
7 this point in time?

8 A. No.

9 Q. I draw your attention to the two entries -- or the two
10 deposits/credits on 1/5 for \$8 million and \$2 million. Do you
11 see those?

12 A. I do.

13 Q. What do those represent?

14 A. Those were wires that came from me. The 8 million was
15 from myself and then 2 million from Mr. Wharton, my partner in
16 that business, and effectively representing our ownership
17 interests in the company. So I put in 8 and he put in 2, and
18 that's, again, what we were going to use to purchase the
19 software.

20 Q. The ControlPoint software that MicroTechnologies had
21 licensed from Autonomy?

22 A. Correct.

23 Q. Further below there's a \$10 million wire to
24 MicroTechnologies LLC. Do you see that?

25 A. I do.

1 Q. What is that?

2 A. That is our payment for the software that we licensed from
3 Autonomy through MicroTech.

4 Q. What was the starting balance for Discover Technologies
5 checking account on December -- or January 1st, 2010?

6 A. Zero. It was a brand new checking account.

7 Q. Did you have discussions with Tim Wharton about the
8 \$2 million that was coming into this account?

9 A. Sure. Of course. We both agreed that we were --

10 MR. KEKER: Objection, Your Honor. Hearsay.

11 THE COURT: Okay. So I think what you can testify to
12 is not what he said to you, unless there's some exception to
13 the hearsay rule, so I'm sustaining the objection. But you can
14 introduce the conversation, and I would admonish the jury as
15 follows:

16 I believe that this question calls for what we call
17 hearsay. That is a statement made by an individual out of
18 court -- okay -- and he's not here to be cross-examined about
19 that statement.

20 Now, what can you consider it for? You can consider it
21 for -- if you believe it occurred -- for explaining the
22 witness' actions or state of mind; that is, that what he did or
23 what he said was in response to something that was told to him.

24 You cannot consider it for what's called the truth of the
25 matter; that is, that whatever that person said is true. It

1 may be true, it may not be true, but we're not admitting it for
2 that purpose.

3 Now, if you master that concept, you have done more than
4 most law students do in a lifetime of them practicing law, but
5 that's the concept and I'm quite sure you can grasp that part.
6 Therefore, it is not being introduced for the truth of the
7 matter. It is being introduced for the -- to explain the state
8 of mind and the subsequent conduct of the witness.

9 Okay?

10 **MR. LEACH:** Thank you, Your Honor.

11 **Q.** Did you and Mr. Wharton have an understanding that you
12 were going to use the money from the MicroLink acquisition to
13 fund the software purchase?

14 **A.** Yes, we did.

15 **Q.** So as of January 2010, Discover Technologies has licensed
16 \$10 million worth of ControlPoint software?

17 **A.** Correct.

18 **Q.** Was Discover Technologies successful in selling any
19 ControlPoint software?

20 **A.** No.

21 **Q.** Let me move forward in time, Mr. Truitt, to April of 2010
22 or the closing dates of March 2010, early 2000 -- April 2010.
23 Do you have that time period in mind?

24 **A.** I do.

25 **Q.** Would you please look at what has been marked as

1 Exhibit 624?

2 A. (Witness examines document.) Okay.

3 Q. Do you recognize this document?

4 A. It's a copy of my phone records for that period.

5 MR. LEACH: Your Honor, I offer Exhibit 624.

6 THE COURT: Admitted.

7 (Trial Exhibit 624 received in evidence)

8 BY MR. LEACH:

9 Q. These are your phone records for the period March 5th,
10 2010, to April 4th, 2010, Mr. Truitt?

11 A. That's right.

12 Q. Your provider was AT&T?

13 A. Correct.

14 Q. I draw your attention to page 33 of the exhibit.

15 A. (Witness examines document.) Okay.

16 Q. Up near the top in bold there's a phone number
17 703-915-1829. Do you see that?

18 A. Yes. That's my phone number.

19 Q. Thank you.

20 Further down below I draw your attention to item 923 and
21 924. Do you see the entries at 3:02 p.m. and 3:20 p.m.?

22 A. I do.

23 Q. To the right there's a phone number 415-370-2207. Do you
24 see that?

25 A. I do.

1 Q. Do you recognize that phone number?

2 A. Yes. That is Mr. Egan's cell phone number.

3 Q. Now if we could please go back to page 15, some of the
4 call details.

5 A. (Witness examines document.) Okay.

6 Q. I draw your attention to item 364, roughly halfway down
7 the page.

8 A. Yes.

9 Q. Do you see a phone call from the same phone number,
10 415-370-2207?

11 A. Yes.

12 Q. On April 1st, 2010, did you have a discussion with
13 Mr. Egan about a potential software transaction?

14 A. I did.

15 Q. Take a moment and describe what happened.

16 A. Mr. Egan called me. It was, as you say, one day after the
17 end. So this is April 1st. I happened to be on vacation. It
18 was spring break. I was down in West Palm Beach with my
19 family.

20 I received a phone call from Mr. Egan. He asked
21 whether -- whether I could have a conversation with the
22 executives at MicroTech and whether they would be interested in
23 talking about an order -- an order that they wanted processed
24 for the end of that prior quarter, and that was an order with
25 the Vatican.

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1 Q. Prior to April 1st, 2010, had you heard of any potential
2 transaction with the Vatican?

3 A. I had not.

4 Q. And did Mr. Egan mention any type of dollar value or what
5 he wanted MicroLink -- MicroTech to do?

6 A. He did. He gave me some basics on the deal. He mentioned
7 that it was a 10- to \$11 million opportunity, I believe; that
8 it was a deal that Mr. Hussain was working personally; that it
9 was pretty exciting work. They were digitizing. They had
10 people, engineers, that were working in the Vatican
11 performing -- performing work to digitize all of the Vatican's
12 records. And that's about the extent of the phone call.

13 So at that point I -- I did reach out to my brother Steve,
14 who, again, was running operations for MicroTech, explained the
15 situation. He then had a conversation -- or he told me that he
16 had a conversation with Mr. Jimenez, who was the owner of the
17 company MicroTech. They indicated that they would be
18 interested in having a phone call to discuss that order.

19 I believe at that point I also called Mr. Cronin, who was
20 also helping MicroTech process orders; and that's kind of where
21 I -- my involvement stopped.

22 Q. You said you were on vacation when you got this phone
23 call?

24 A. I was.

25 Q. And why does this phone call stand out in your mind?

1 A. Well, it was something that was out of the norm.
2 Normally, you know, everybody works hard through the end of the
3 quarter and you don't continue.

4 And I also happened to be on the beach. I just recall it
5 very clearly that I was, you know, sitting on a chair on the
6 beach and I got a call from Mr. Egan.

7 Q. Did Mr. Egan indicate when he wanted the order to be -- in
8 which quarter he wanted the order to be in?

9 A. Yes, he did. He mentioned that he would like the order to
10 be in the first quarter of the year.

11 Q. What significance did you attach to that?

12 A. Well, it was obviously after the quarter had ended, so
13 that was unusual.

14 Q. Further down below in the phone records there's a
15 22-minute phone call to 415-625-1494. Do you see that?

16 A. Yes.

17 Q. Are you familiar with that number?

18 A. I'm assuming that that is an Autonomy work phone, but I'm
19 not sure.

20 Q. Below that there's a number to -- a call to 703-674-9185.
21 Do you see that?

22 A. Yes. I believe that would be Mr. Cronin's cell phone
23 number.

24 Q. And there's another 703 phone number, 891-1073. What is
25 that?

1 A. I -- I don't know for sure.

2 Q. Okay. The opportunity at the Vatican, did MicroTech have
3 any relationship with the Vatican at this point in time?

4 A. Not that I'm aware of.

5 Q. Did it do any international work?

6 A. Not at that -- not -- I do not believe so.

7 Q. Did MicroTech ultimately sign a purchase order to license
8 software from Autonomy to sell to the Vatican?

9 A. They did.

10 Q. Was MicroTech ever successful in selling software to the
11 Vatican?

12 A. No.

13 Q. Was Autonomy ever successful in selling software to the
14 Vatican?

15 A. No.

16 Q. At this point in time -- I want to go back briefly out of
17 April to the end of March 2010 and talk a little bit about
18 Discover Technologies.

19 At this point in time how long had Discover Technologies
20 been in business?

21 A. A full quarter.

22 Q. How many employees did it have?

23 A. We had probably eight or so employees at the time.

24 Q. Did you consider Discover Technologies to be a startup?

25 A. Yes. That's fair.

1 Q. When you started Discover Technologies, was it your plan
2 to resell Autonomy software in the manner that MicroLink had
3 done?

4 A. No, that was not part of our original business plan.

5 Q. Near the end of March 2010, were you approached by
6 Autonomy seeking Discover Technologies' agreement to resell
7 software to certain end users?

8 MR. KEKER: Objection. Foundation. Autonomy is 3,000
9 people, Your Honor.

10 BY MR. LEACH:

11 Q. Were you --

12 THE COURT: Lay a foundation.

13 BY MR. LEACH:

14 Q. Were you approached by someone from Autonomy at the end of
15 March 2010 asking whether Discover Technologies would resell
16 software to certain end users?

17 A. Yes. I was approached by Mr. Egan and we had that
18 discussion.

19 Q. Describe for us what happened.

20 A. He -- he called and wanted to discuss two opportunities.
21 He wanted to understand if we would be interested in
22 potentially issuing orders. They were fairly -- fairly large
23 orders, but they were also existing Autonomy customers.
24 Citibank and Philip Morris, I believe, were the orders that he
25 wanted to discuss. I was interested in, you know, potentially

1 participating with that.

2 We discussed how that might happen. The issue that came
3 up, because we were such a new company without much of a track
4 record, I know there's a vetting process that occurs when
5 Autonomy considers a new company. What was expressed to me by
6 Mr. Egan was that we would be looked at more favorably as a
7 participant in those orders if we could come up with some
8 upfront cash. So effectively show that we had the ability to
9 participate with those deals. And between the two of them, I
10 believe that we ultimately settled on a number just north of
11 \$2 million.

12 Based on everything that I had learned about the
13 opportunities, I was interested. Me and Mr. Wharton funded the
14 company with some additional cash with which we could then send
15 over as a prepayment for those purchase orders.

16 Q. At this point in time, the end of March 2010, you were
17 also the CEO of MicroLink; is that right?

18 A. Yes. As part of our -- part of our deal, given the fact
19 that I was being allowed to start a new company, I remained at
20 MicroLink as its CEO, but I was also allowed to work 25 percent
21 of my time on the new company at the same time.

22 Q. As the CEO of MicroLink, who was your boss?

23 A. Mr. Hussain I guess was my boss.

24 Q. At this point in time, end of March 2010, did Discover
25 Technologies have any meaningful sales of product on its own?

1 A. We had -- we had one or two. By meaningful, they were
2 meaningful to us. You know, a couple hundred thousand dollars
3 I believe was the first one that we did with a Canadian
4 company, Tech Resources.

5 Q. Let me draw your attention to what has been marked as
6 Exhibit 670.

7 A. (Witness examines document.) Okay.

8 Q. Do you recognize this?

9 A. Yes, I do. This is an agreement that we were sent by
10 Autonomy that shows the agreement that they were putting in
11 place with Philip Morris. So this gave us some -- some
12 background and some knowledge around the existing relationship
13 that Autonomy had with Philip Morris.

14 THE COURT: Admitted.

15 (Trial Exhibit 670 received in evidence)

16 BY MR. LEACH:

17 Q. Let me please draw your attention, Mr. Truitt, to the
18 bottom portion of Exhibit 670. There's an e-mail from someone
19 named Rachel Haverfield at autonomy.com. Do you see that?

20 A. Yes.

21 Q. And the subject is "PMI Contract." What's your
22 understanding of what "PMI" is an abbreviation for?

23 A. That's Philip Morris, Incorporated.

24 Q. That's the tobacco company?

25 A. Correct.

1 Q. And she's writing to StoufferE at autonomy.com (reading):

2 "Stouffer, Andy asked me to send you the Philip
3 Morris Agreement, which is the USD4.5 mill possible deal
4 for Q1."

5 Do you see that?

6 A. Yes.

7 Q. And if we look above that, Mr. Egan forwards this to you
8 and to Mr. Cronin, and he wrote (reading):

9 "Gentlemen, this is the deal for FedBD."

10 What did you understand that to mean?

11 A. FedBD was Mr. Cronin's company, and I believe that when
12 Mr. Egan had called me, he was also looking at potential other
13 companies who might be interested in that purchase order as
14 well.

15 Q. If we could please scroll up to the top to your e-mail to
16 Tim Wharton and John Cronin. You write (reading):

17 "This is the second deal, Philip Morris."

18 What did you mean by "the second deal"?

19 A. Citibank was the first deal, and this was the second one
20 that we talked about.

21 Q. (reading)

22 "Told Stouffer that we would not be doing the FedBD
23 route as we do not have enough time to figure out how that
24 would work."

25 What did you mean by that?

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1 **A.** I think that John really made that decision, and I was
2 relaying it. You know, he -- he didn't have the infrastructure
3 or the funds that would allow him to participate in that order.

4 **Q.** You then wrote (reading):

5 "I broached the working cap issue. He is checking
6 with Sush and calling me back."

7 What do you mean by "Sush"?

8 **A.** Mr. Hussain.

9 **Q.** And what did you mean by "the working cap issue"?

10 **A.** That's what I was describing regarding our ability, again,
11 to show that we could play, that we had the resources necessary
12 to participate in a deal of that size with Autonomy.

13 **Q.** Please look at what has been marked as Exhibit 674.

14 **A.** (Witness examines document.)

15 **Q.** Is this a true and correct copy of an e-mail from Malcolm
16 Hyson to Autonomy with a copy to you attaching certain executed
17 reseller agreements?

18 **A.** Yes.

19 **THE COURT:** Admitted.

20 (Trial Exhibit 674 received in evidence)

21 **BY MR. LEACH:**

22 **Q.** Mr. Truitt, I draw your attention to the top portion of
23 this e-mail. It's from someone named Malcolm Hyson. Who is
24 he?

25 **A.** Malcolm is our chief technology officer at Discover

1 Technologies.

2 Q. Is he someone you worked with closely?

3 A. Yes. He was one of the employees that we worked with at
4 MicroLink. He was heading up our software group, and he was
5 one of the folks we brought over to Discover.

6 Q. The subject of this is "Reseller Agreements." What does
7 that mean?

8 A. These were agreements that were put in place specific to a
9 deal, so they would do kind of one-off agreements that would
10 describe the particular deal that we were focused on.

11 Q. Let me draw your attention to page 2.

12 A. (Witness examines document.)

13 Q. And do you see the words "Citigroup Technology" in the
14 first paragraph?

15 A. Yes.

16 Q. Is this the reseller agreement in respect of Discover
17 Technologies reselling software to Citigroup?

18 A. Yes, it is.

19 Q. What was the amount of this order?

20 A. (Witness examines document.) \$5.5 million.

21 Q. Please look at page 5.

22 A. (Witness examines document.)

23 Q. Do you have page 5 of Exhibit 674 in front of you?

24 A. Yes.

25 Q. And is this the first page of the reseller agreement with

1 respect to Philip Morris International Management SA?

2 A. Yes, it is.

3 Q. What is the amount of this order?

4 A. 4,185,000.

5 Q. Put that to the side, Mr. Truitt, and please look at what
6 has been marked as Exhibit 786.

7 A. (Witness examines document.)

8 Q. Is this a true and correct copy of bank records for an
9 account in the name of Discover Technologies LLC for the month
10 ending April 30th, 2010?

11 A. Yes, it is.

12 THE COURT: Admitted.

13 (Trial Exhibit 786 received in evidence)

14 BY MR. LEACH:

15 Q. I draw your attention, Mr. Truitt, to the account number
16 56798. Do you see that?

17 A. Yes.

18 Q. Is this the same account that you used to fund the
19 \$10 million purchase back in January?

20 A. Yes, it is.

21 Q. What is the starting balance for April of 2010?

22 A. \$131,322.47.

23 Q. At this point in time did Discover Technologies have any
24 other bank accounts?

25 A. No.

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1 Q. Beyond the ControlPoint software that it bought and the
2 software Discover was developing, did it have any significant
3 assets?

4 A. No. Our IP was probably our biggest asset at the time.

5 Q. I draw your attention to the two wires -- the two
6 deposits/credits on April 5th, one in the amount of
7 1.627 million and the other for 406,000.

8 A. Yes.

9 Q. What do those represent?

10 A. That was Mr. Wharton and myself funding again with our
11 respective percentages and ownership in the company to place
12 funds in the company such that we could send those off to
13 Autonomy as our agreed-upon prepayment.

14 Q. Further below on April 7th there's a \$2 million check
15 going out. Do you see that, approximately \$2 million?

16 A. Yes.

17 Q. What is that?

18 A. Those are the \$2 million funds that we sent to prepay for
19 the orders.

20 Q. Without these \$2 million in capital contributions or
21 loans, did Discover Tech have the means to pay for the software
22 if it didn't sell through?

23 A. No. We would have had to fund, you know, with additional
24 cash if the orders didn't go through.

25 Q. Did Discover Tech have any relevant contacts at Citi?

1 A. No.

2 Q. Did it have any relevant contacts at Philip Morris?

3 A. No.

4 Q. Did it do any demonstrations of software for Citi?

5 A. No, we did not. But, you know, to be fair, again, these
6 were existing customers of Autonomy's. They were already
7 running this technology. So my understanding is that it was
8 more of a capacity issue. But, no, we did not participate in
9 any sales -- any sales efforts on either of these accounts.

10 Q. Would you say that Autonomy exercised control over what to
11 sell to Citi, when, and at what price?

12 A. I would say that at this point in the sales cycle, that
13 was already determined by the time we were involved.

14 Q. So is the answer yes?

15 A. Is the answer were they in control, yes, I would say
16 that's fair.

17 Q. Please look at what has been marked as Exhibit 835.

18 A. (Witness examines document.)

19 MR. KEKER: '30 or '45?

20 MR. LEACH: 835.

21 THE WITNESS: (Witness examines document.)

22 BY MR. LEACH:

23 Q. Mr. Truitt, is this a -- do you see the signature down at
24 the bottom of Exhibit 835?

25 A. Yes. That is Mr. Hyson's signature.

1 **THE COURT:** Admitted.

2 (Trial Exhibit 835 received in evidence)

3 **BY MR. LEACH:**

4 **Q.** What is this document, Mr. Truitt?

5 **A.** This is a -- this is a letter from Deloitte wanting us to
6 indicate that we, indeed, did issue a purchase order for
7 these -- for these deals.

8 **Q.** And if we could scroll down, please, to the signature
9 line.

10 It says "Company Discover Technologies" and there's a
11 signature. Is that Mr. Hyson's signature?

12 **A.** Yes.

13 **Q.** And his title was CTO at the time?

14 **A.** Yes.

15 **Q.** And the date is July 6, 2010?

16 **A.** Correct.

17 **Q.** And is this a fair summary of what Discover Technologies
18 owed to Autonomy in respect of the Philip Morris and Citigroup
19 deals?

20 **A.** I believe so, yes.

21 **Q.** If we could go up to the top to the amounts, please.

22 There's one invoice numbered 4710ASL in the amount of
23 \$3,515,400. Is that the PMI deal?

24 **A.** I believe so, yes.

25 **Q.** And what are the two other invoices numbers below that?

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1 **A.** I believe that they must be the combined the total we owed
2 for the Citi deal.

3 **Q.** I'd like to move forward in time, Mr. Truitt, to the end
4 of June 2010. We're refocused to the end of June 2010. And
5 you mentioned a company called Tech Resources earlier. What is
6 Tech Resources?

7 **A.** It was a Canadian firm that -- mining company, and they
8 were interested in DiscoverPoint technology. They were a
9 SharePoint shop, and they were also interested in Autonomy
10 software. So we were really working as a team to demonstrate
11 DiscoverPoint with Autonomy to sell them our software.

12 **Q.** When you say "we were working as a team," can you explain
13 a little bit about what you mean there?

14 **A.** Yeah. I meant Autonomy was looking to sell their IDOL
15 product, I believe, and we were looking to -- you know, our
16 product was kind of a user interface that would be on the front
17 of that that would assist around SharePoint, which was what
18 their -- you know, their technology had. So we were -- you
19 know, the customer was interested in both our software --
20 "ours" being Discover -- Discover Technologies -- and
21 Autonomy's software, and so we were demonstrating those
22 together.

23 **Q.** Please look at what has been marked as Exhibit 928.

24 **A.** (Witness examines document.)

25 **Q.** Is this a true and correct copy of an e-mail you received

1 on or about June 30th, 2010, attaching contracts relating to
2 the licensing of DiscoverPoint?

3 **A.** Yes, it is.

4 **THE COURT:** Admitted.

5 (Trial Exhibit 928 received in evidence)

6 **BY MR. LEACH:**

7 **Q.** My first question, Mr. Truitt, at the top, there's someone
8 named Joel Mountain and the signature line indicates he was
9 from MicroLink. Who was he?

10 **A.** He was one of our sales reps. He actually lived out here
11 in San Francisco.

12 **Q.** You say "our sales rep." He worked for MicroLink?

13 **A.** That's correct.

14 **Q.** Okay. Please look at page 2.

15 **A.** (Witness examines document.)

16 **Q.** Up at the top it says "Software Distributor Agreements."
17 Do you see that?

18 **A.** Yes.

19 **Q.** Is this the first page of the distributor agreement
20 between Discover Technologies and Autonomy?

21 **A.** Yes.

22 **Q.** Please look at the last page, page 928 -- or page 8 of
23 Exhibit 928.

24 **A.** (Witness examines document.)

25 **Q.** What is this?

1 A. This appears to be a signed order. I guess Autonomy was
2 going to purchase DiscoverPoint and then provide their software
3 and ours to Tech Resources.

4 Q. What was the amount of the price of the software that
5 Autonomy was ordering?

6 A. \$213,800.

7 Q. And to the left, what was the number of users that it was
8 licensing software for?

9 A. 4,000.

10 Q. Thank you, Mr. Truitt. You can put that to the side.
11 Did Discover Technologies ever resell software to
12 Citigroup?

13 A. We did not ever resell it directly. Citigroup decided to
14 work directly with Autonomy.

15 Q. Please look at what has been marked as Exhibit 1042.

16 A. (Witness examines document.) Okay.

17 Q. Is this a true and correct copy of an e-mail exchange
18 among you, Mr. Cronin, and Tim Wharton in August of 2010
19 relating to the Citigroup transaction?

20 A. Yes.

21 THE COURT: Admitted.

22 (Trial Exhibit 1042 received in evidence)

23 BY MR. LEACH:

24 Q. Mr. Truitt, the date of this e-mail is August 10th, 2010.
25 Do you see that?

1 A. Yes.

2 Q. And at this point did Discover Technologies continue to
3 owe money to Autonomy relating to the March 2010 agreement with
4 respect to Citigroup?

5 A. Yes.

6 Q. Please look at the bottom of this page. There's an e-mail
7 from someone named Robert Mark to John Cronin. Do you see
8 that?

9 A. Yes.

10 Q. Who is Robert Mark?

11 A. I do not know Mr. Mark, but he's an Autonomy employee.

12 Q. He wrote (reading):

13 "John, we are working on a different approach that
14 would have us act as agents for collecting and forwarding
15 to you."

16 Do you see that?

17 A. Yes.

18 Q. And then further up above -- all the way up at the top,
19 please -- Mr. Cronin is writing (reading):

20 "It appears that a method is being worked where DT
21 would be the reseller, Autonomy would be acting as a DT
22 agent and executing an agreement with Citi directly."

23 Can you help us understand what that means?

24 A. Not -- not specifically but, you know, they were -- we
25 were looking to -- Discover was having conversations with

1 procurement at Citi. We were trying to figure out what it
2 would take for them to deal with us directly, and what we found
3 was that they had concerns about that. It was a very long
4 process -- excuse me -- to get -- to get put on their approved
5 vendor list.

6 I think this is strategy in terms of how -- you know, how
7 we could get it done. It wasn't a factor of whether they
8 wanted to buy the capacity. It was really an exercise around
9 how -- how will they buy it, and that's what we're discussing
10 here.

11 Q. What was the solution that's being discussed here?

12 A. Well, I can read what it says. It says here that Discover
13 would be the reseller, that Autonomy would be acting as an
14 agent for Discover executing an agreement with Citi directly.
15 So ultimately they wanted to deal directly with Autonomy as
16 opposed to dealing with a reseller.

17 Q. So Citi would pay Autonomy and your debt goes away?

18 A. Correct.

19 Q. Please look at what has been marked as Exhibit 1173.

20 A. (Witness examines document.)

21 Q. Is this a true and correct copy of an e-mail you sent to
22 Andrew Kanter and Stouffer Egan on or about October 15th, 2010?

23 A. Yes.

24 THE COURT: Admitted.

25 (Trial Exhibit 1173 received in evidence)

1 **BY MR. LEACH:**

2 **Q.** Please look at page 2, Mr. Truitt. What is this document?

3 **A.** This is an agreement that reflects a referral partnering
4 agreement where -- and the net effect of this is where we could
5 get paid our margin for the Citi deal even though it went
6 direct to Autonomy.

7 **Q.** What do you mean by your margin?

8 **A.** Our margin would be the 10 percent that we expected upon
9 closure of the software deal. So our perspective is, you know,
10 we issued the order, did our best to close the order. We took
11 the risk by issuing the order, and that we expected to be paid
12 a margin when the deal closed.

13 **Q.** Did Discover Technologies ever deliver software to
14 Citigroup?

15 **A.** Not directly.

16 **Q.** I draw your attention to paragraph two of this agreement.
17 This says (reading):

18 "Referral partner will (1) Introduce Autonomy into
19 the deals with Citigroup."

20 Do you see that?

21 **A.** Yes, I do.

22 **Q.** Who is the referral partner?

23 **A.** That would be Discover.

24 **Q.** Did Discover introduce Autonomy into the deals with
25 Citigroup?

1 A. We did not.

2 Q. (reading)

3 "(2) Obtain quotes from Autonomy on behalf of the end
4 user."

5 Did Discover Technologies do that?

6 A. We did not.

7 Q. In the third paragraph it says (reading):

8 "Autonomy will pay referral partner commissions in
9 the amount of 497,000."

10 How was that \$497,000 figure arrived at, Mr. Truitt?

11 A. I believe it was 10 percent of what was ultimately sold to
12 Citi.

13 Q. Beyond signing the purchase order in March of 2010 and
14 taking the risk as you described, did Discover Tech provide any
15 marketing assistance to Autonomy?

16 A. No. Again, these existing customer deals, there really
17 wasn't much to do. We did not.

18 Q. I'd like to move forward in time, Mr. Truitt, to the
19 fourth quarter of 2010. Are you familiar with someone named
20 Roger Channing?

21 A. Yes, I am.

22 Q. Who is he?

23 A. He was hired as a MicroTech employee. His job title
24 escapes me, but he was a MicroTech employee.

25 Q. Prior to Mr. Channing becoming a MicroTech employee, did

1 he approach you about possibly doing some work for MicroLink?

2 **A.** Yes. Mr. Channing had some ideas around data center
3 development, and he was referred to me I forget by whom. We
4 brought him in. We had a discussion with him. He was a -- he
5 was a very impressive, smart gentleman. He had some
6 interesting ideas, but we were not in the business of building
7 data centers.

8 And after I spoke with him, I referred his résumé up to
9 Mr. Jimenez, who was interested in that type of business. So
10 that's how we -- that's how I met him for the first time, was
11 really an interview.

12 **Q.** Please look at what has been marked as Exhibit 1199.

13 **A.** (Witness examines document.)

14 **Q.** Is this a true and correct copy of an e-mail from you to
15 John Cronin forwarding an e-mail from Dr. Roger Channing with
16 an attachment, Mr. Truitt?

17 **A.** (Witness examines document.) Yes.

18 **THE COURT:** Admitted.

19 (Trial Exhibit 1199 received in evidence)

20 **BY MR. LEACH:**

21 **Q.** Let me draw your attention, Mr. Truitt -- have you had a
22 chance to review that, Mr. Truitt?

23 **A.** Yes.

24 **Q.** Okay. I draw your attention to the initial e-mail in the
25 chain on October 12th, 2010. Do you see that?

1 A. Yes, I do.

2 Q. And the -- further up, please. Thank you, Ms. Margen.
3 What is the date of that e-mail?

4 A. October 12th, 2010.

5 Q. What is the subject?

6 A. This is a PowerPoint it appears that Mr. Channing had put
7 together to kind of put down on paper what he had come in and
8 talked to us about the week before.

9 Q. Okay.

10 A. His ideas --

11 Q. Ideas to --

12 A. -- around --

13 Q. -- build a data center?

14 A. Yes, that's correct.

15 Q. Please look at page 3.

16 A. (Witness examines document.) Okay.

17 Q. I draw your attention to the first paragraph where
18 Mr. Channing writes (reading):

19 "You indicated that MicroLink/Autonomy might consider
20 implementing a KM/C4I Innovation and Integration (I2)
21 business strategy."

22 What is that?

23 A. I think the KM/C4I is kind of what he was calling his
24 idea. I don't -- I don't necessarily recall saying that
25 MicroLink was interested, but this is him following up on our

1 meeting and showing us, you know, more information around what
2 he wanted to do.

3 Q. At this time, October 2010, were you still affiliated with
4 MicroLink?

5 A. I was.

6 Q. What was your title?

7 A. CEO.

8 Q. And who was your boss at this point in time?

9 A. Mr. Hussain.

10 Q. If we could please go back to the first page of the
11 document.

12 You forward this to Mr. Cronin on or about November 2nd,
13 2010; is that right, Mr. Truitt?

14 A. Yes.

15 Q. In early November 2010, did you have a meeting with
16 Mr. Hussain and Joel Scott?

17 A. Yes, I did.

18 Q. Where was the meeting?

19 A. It took place in New York City.

20 Q. How did that come about?

21 A. I understood that Mr. Hussain was in New York City, and I
22 was wanting to let him know that I was going to resign from
23 MicroLink and focus my attention on Discover. So I thought I
24 would go up and have that conversation with him face to face.

25 Q. Please look at what has been marked as Exhibit 1204.

1 A. (Witness examines document.) Okay.

2 Q. Is this a true and correct copy of an e-mail you sent to
3 Joel Scott on November 5th, 2010, attaching something titled
4 "MicroTech Proposal"?

5 A. Yes, it is.

6 MR. LEACH: Your Honor, I offer Exhibit 1204.

7 THE COURT: Admitted.

8 (Trial Exhibit 1204 received in evidence)

9 BY MR. LEACH:

10 Q. Before we jump into the substance of this, Mr. Truitt, at
11 this time, November 2010, had MicroTech been successful in
12 selling software to the Vatican?

13 A. No.

14 Q. Did MicroTech owe monies to Autonomy in respect of the
15 purchase order?

16 A. Yes.

17 Q. Roughly how much?

18 A. I don't know specifically, but I would imagine that it
19 was -- it was millions. It was 8, 10. I'm not sure whether
20 they had made any payments towards what they owed or not at
21 that point.

22 Q. Okay. Did that outstanding obligation become a source of
23 frustration with your brother and others at MicroTech?

24 A. I'm sure that they were concerned about it.

25 Q. Going back to the e-mail, the date is November 5th, 2010.

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1 Is that at or around the time you met with Mr. Hussain and
2 Mr. Scott?

3 **A.** Yes.

4 **Q.** Why were you sending this e-mail to Mr. Scott?

5 **A.** As it says here, MicroTech had provided it to me. I'm not
6 sure whether they knew I was going up to meet with them in
7 person and perhaps that's why they sent it to me.

8 Oftentimes because I was an investor within MicroTech,
9 they would -- you know, MicroTech would use me to get questions
10 answered because I had a longer-standing relationship with
11 Autonomy.

12 At the same time Autonomy would use me in that same way
13 sometimes if they needed an answer from MicroTech. They just
14 kind of -- I acted as a liaison sometimes between the two
15 companies. So they forwarded this to me and I forwarded it up
16 to Mr. Scott.

17 **Q.** What was the proposal you were forwarding to Mr. Scott?

18 **A.** This is a proposal for something called the ATIC, the
19 Advanced Technology Innovation Center. So this is something
20 that MicroTech was presenting as a possibility of something
21 that they could do for Autonomy.

22 **Q.** What were they proposing to do?

23 **A.** Effectively build out a center that would focus on
24 introducing Autonomy software to the federal government. So
25 the center would be full of hardware and software and a

1 dedicated team of engineers to facilitate that. So the
2 proposal was -- you know, it was -- it was a business
3 development marketing center for Autonomy.

4 **Q.** Please look at page 31 of the -- or page 29 of this
5 exhibit.

6 **A.** (Witness examines document.)

7 **THE COURT:** It's on the screen.

8 **THE WITNESS:** Oh, thank you.

9 Okay.

10 **BY MR. LEACH:**

11 **Q.** What was the amount of money that MicroTech was proposing
12 Autonomy pay to MicroTech for this Advanced Technology
13 Innovation Center?

14 **A.** It looks like it was \$3,747,500.

15 **Q.** And under the heading "Labor," do you see Dr. Channing's
16 name there?

17 **A.** Yes.

18 **Q.** Is this essentially an iteration of Mr. Channing's idea
19 that he had brought to you initially back in October?

20 **A.** I think that there are certainly some similarities between
21 what he was talking about and what they are offering here. You
22 know, the Autonomy focus is probably a bit different than what
23 he had -- he had originally talked about but, yes, it was quite
24 similar.

25 **Q.** So you send this to Mr. Scott in advance of your meeting

1 with Mr. Hussain. Please describe for us the meeting you had
2 with those two gentlemen in New York in early November.

3 **A.** It was a dinner. I don't recall really talking about
4 this -- this particular proposal. I'm not sure that
5 Mr. Hussain had even had a chance to review it, or Mr. Scott
6 for that matter. I think it was just a few days earlier that I
7 had sent it to them.

8 So the dinner was really focused more around the fact that
9 I was -- I was moving on. We talked about when that would
10 happen, how that would happen; and that was the extent of the
11 conversation.

12 **Q.** When was your departure scheduled to happen?

13 **A.** The last day of December of that year, 2010.

14 **Q.** Please look at what has been marked as Exhibit 1314.

15 **A.** (Witness examines document.)

16 **Q.** Is this a true and correct copy of an e-mail Joel Scott
17 sent to you on December 22nd, 2010, relating to the MicroTech
18 proposal we just looked at?

19 **A.** Yes.

20 **THE COURT:** Admitted.

21 (Trial Exhibit 1314 received in evidence)

22 **BY MR. LEACH:**

23 **Q.** Let me draw your attention to the e-mail from -- first of
24 all, the subject of this is "MicroTech Proposal"; is that
25 right?

1 A. Yes.

2 Q. Why is Mr. Scott sending this to you?

3 A. Most likely because I was the one who sent him the
4 original proposal. And, again, they viewed me as a part of the
5 MicroTech team. You know, that wasn't necessarily correct, but
6 I was happy to help in any way that I could.

7 Q. Okay. Between the November 10th e-mail -- or the November
8 e-mail that we looked at and December 22nd, do you recall any
9 discussions with anyone from Autonomy about this ATIC proposal?

10 A. I can't recall specific discussions that I may or may not
11 have had.

12 Q. Did you have conversations with anyone other than
13 Mr. Scott?

14 A. I do not believe so. I think I was dealing primarily with
15 Mr. Scott.

16 Q. Mr. Scott writes to you in the last line (reading):

17 "In line with our discussion, can you please provide
18 us an updated proposal with best and final?"

19 Do you see that?

20 A. Yes.

21 Q. And is your best and final proposal reflected in what has
22 been marked as Exhibit 1320?

23 A. (Witness examines document.)

24 THE COURT: 1320 admitted.

25 (Trial Exhibit 1320 received in evidence)

1 **THE WITNESS:** (Witness examines document.) Yes.

2 **BY MR. LEACH:**

3 **Q.** Let me draw your attention to the first line of the e-mail
4 (reading):

5 "Hi, Joel. Here is the updated best and final
6 proposal from MicroTech, with the out year scenario
7 included."

8 What did that mean?

9 **A.** It means that they were -- they were moving from -- I
10 believe the first proposal was for three years, and I think
11 this one added years four and five.

12 **Q.** Please look at what has been -- or please look at page 29
13 of the exhibit.

14 **A.** (Witness examines document.) Okay.

15 **Q.** I draw your attention to the row "Total Cumulative Price
16 With Prepayment." Do you see that?

17 **A.** Yes.

18 **Q.** What does this represent?

19 **A.** These were the options that they -- MicroTech was
20 proposing for years three, four, and five, I guess allowing
21 them to choose which -- which they would go with.

22 **Q.** Who asked for that?

23 **A.** I believe Mr. Scott asked for that.

24 **Q.** And did Autonomy ultimately agree to pay MicroTech
25 \$9.6 million to develop the ATIC?

1 **A.** Yes.

2 **Q.** Were you hopeful that this would enable MicroTech to get
3 money to pay down the Vatican debt?

4 **A.** I think that that certainly was --

5 **MR. KEKER:** Objection. Calls for speculation,
6 Your Honor.

7 **THE COURT:** Overruled.

8 **THE WITNESS:** I believe --

9 **MR. KEKER:** No foundation.

10 **THE COURT:** Overruled.

11 **THE WITNESS:** I believe that MicroTech was able to
12 utilize some of these funds to make payments for the Vatican.

13 **BY MR. LEACH:**

14 **Q.** Let me please draw your attention to the end of
15 December 2010.

16 **THE COURT:** Well, maybe we'll take a recess. I mean,
17 is this --

18 **MR. LEACH:** This is a convenient stopping point,
19 Your Honor.

20 **THE COURT:** Okay. Ladies and gentlemen, we're taking
21 our recess. We'll be in recess until 10:30.

22 Remember the admonition given to you: Don't discuss the
23 case, allow anyone to discuss it with you, form or express any
24 opinion. And we'll resume at 10:30.

25 You can step down.

1 (Proceedings were heard out of the presence of the jury:)

2 **THE COURT:** About how much longer do you have?

3 **MR. LEACH:** 45 minutes to an hour.

4 **THE COURT:** Thank you.

5 (Recess taken at 10:15 a.m.)

6 (Proceedings resumed at 10:32 a.m.)

7 (Proceedings were heard in the presence of the jury:)

8 **THE COURT:** Let the record reflect all jurors are
9 present, parties are present.

10 You may proceed.

11 **MR. LEACH:** Thank you, Your Honor.

12 **Q.** Before we broke, Mr. Truitt, I was drawing your attention
13 to the end of December, 2010. Do you have that time period in
14 mind?

15 **A.** Yes.

16 **Q.** At or around December 31st, 2010, were you approached
17 about another end-of-quarter deal by Mr. Egan?

18 **A.** Yes.

19 **Q.** Describe for us what happened.

20 **A.** Mr. Egan spoke to me about a deal with Bank of America, a
21 large deal. He indicated again that it was another kind of
22 existing -- existing large customer of Autonomy's, that they
23 were -- I believe that they were increasing the number of seats
24 to 25,000, I believe.

25 He asked if I'd be interested in participating in that

1 deal, and I agreed to participate.

2 Q. Please look at what has been marked as Exhibit 1356.

3 Do you recognize this?

4 A. Yes.

5 Q. What is it?

6 A. This is a -- this is a one-off agreement for us to take --
7 or to participate in the Bank of America deal.

8 THE COURT: Admitted.

9 (Trial Exhibit 1356 received in evidence)

10 BY MR. LEACH:

11 Q. Let me draw your attention, Mr. Truitt, to the initial
12 email in the chain. Do you see the subject, "one-off reseller
13 agreement"?

14 A. Yes, sir.

15 Q. What is the date?

16 A. December 31st, 2010.

17 Q. Someone named Livius Guaio was writing, "John, I've been
18 working with Stouffer on the deal involving Bank of America,
19 and attached for your review is a one-off reseller letter
20 agreement authorizing the sale of an additional 25,000 user
21 licenses to BofA."

22 Do you see that?

23 A. Yes.

24 Q. Is that what you meant by the term "seats"?

25 A. Yes.

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1 **Q.** Please look at page 3 of the draft agreement.

2 What is the date at the top?

3 **A.** December 31st, 2010.

4 **Q.** In paragraph 2, "fees and payments," what is the total
5 dollar amount being proposed in this draft license agreement?

6 **A.** 7 million.

7 **Q.** Please look at page 3 -- excuse me -- page 5. Sorry. And
8 up at the top, do you see the heading "Autonomy Software
9 Products"?

10 **A.** Yes.

11 **Q.** And to the right, there's a column "quantity."

12 **A.** Yes.

13 **Q.** And there's a reference to "an additional 25,000
14 identifiable users."

15 Is that the seats you were mentioning?

16 **A.** Correct.

17 **Q.** Did Discover Tech agree to this?

18 **A.** We did.

19 **Q.** Is that agreement reflected in what has been marked as
20 Exhibit 1354?

21 **A.** Yes.

22 **MR. LEACH:** Your Honor, I offer Exhibit 1354 in
23 evidence.

24 **THE COURT:** Admitted.

25 (Trial Exhibit 1354 received in evidence)

1 **BY MR. LEACH:**

2 **Q.** What is the date of the agreement, Mr. Truitt?

3 **A.** December 31, 2010.

4 **Q.** What is the amount in paragraph 2?

5 **A.** 7 million.

6 **Q.** Did Discover Tech have the ability to pay \$7 million to
7 Autonomy if it was unable to resell this software?

8 **A.** Not without recapitalizing the company.

9 **Q.** On or before December 31, 2011, were there any other
10 agreements between Discover Tech and Autonomy in respect of
11 selling software to BofA?

12 **THE COURT:** I'm sorry. You said 2011.

13 **MR. LEACH:** I misspoke, Your Honor. Let me ask that
14 again.

15 **Q.** On December 31, 2010 -- December 31, 2010, were there any
16 other agreements between Discover Tech and Autonomy relating to
17 the sale of software to BofA?

18 **A.** No.

19 **Q.** At some point in time after December 31st, 2010, were you
20 approached by someone in Autonomy to execute an additional
21 agreement relating to the sale of software to BofA?

22 **A.** Yes.

23 **Q.** If you could please look briefly at what have been marked
24 as Exhibits 1488, 1490, 1492, 1485, 1491, 1510, 1500, 1499,
25 1511, and 1516.

1 **MR. KEKER:** Your Honor, I'm sorry. Can I get those
2 again?

3 **THE COURT:** So let's -- you are going to offer them?

4 **MR. LEACH:** I am going to offer them en masse,
5 Your Honor.

6 **THE COURT:** We have to get the numbers right.
7 1488, 1490, 1492, 1485, 1491, 1510, 1500, 1499, 1511, and
8 1516.

9 Any objection to any of these exhibits?

10 **MR. KEKER:** Can I just --

11 **THE COURT:** Yes. Take your time, take a look at them.
12 (Mr. Keker reviews documents.)

13 **THE WITNESS:** Okay. I've gone through them.

14 **MR. KEKER:** No objection, Your Honor.

15 **THE COURT:** Okay. They are all admitted.
16 (Trial Exhibits 1488, 1490, 1492, 1485, 1491, 1510,
17 1500, 1499, 1511 and 1516 received in evidence)

18 **MR. LEACH:** Thank you, Your Honor.

19 **Q.** If we could please display 1488.

20 And I draw your attention, Mr. Truitt, to the top portion
21 of this email.

22 Do you see Stouffer Egan's name at the top?

23 **A.** I do.

24 **Q.** What is the date of this email?

25 **A.** January 25th, 2011.

1 Q. What is the subject?

2 A. The subject is "Another reseller agreement signed by
3 Discover." Effectively the order has grown, is the subject of
4 this email and exhibits.

5 Q. The \$7 million order has grown to something larger; is
6 that what you're saying?

7 A. Correct.

8 Q. Mr. Egan writes to you, "Dave, I'll call you about this
9 around 4:00 p.m. your time. It will be important that it be
10 signed as is with no additions or modifications late today and
11 scanned and emailed back."

12 Do you see that language?

13 A. Yes.

14 Q. And then it says, "This covers the excess amount of the
15 order."

16 What did you understand that to mean?

17 A. That is the amount that the order was expanding at that
18 time.

19 Q. Okay. Please look at page 2.

20 What is the date of the draft agreement that Mr. Egan was
21 sending to you on January 25th, 2011?

22 A. December 31st, 2010.

23 Q. What is the amount of the order in paragraph 2?

24 A. \$3,675,000.

25 Q. Would you please look at page 4 of the exhibit.

1 What is the software that is the subject of this draft
2 agreement?

3 A. It doesn't indicate specifically what they are.

4 Q. It says in "quantity" --

5 A. Any -- are you asking about the quantity or what the
6 software --

7 Q. I'm asking about the quantity.

8 A. There is no quantity, but it says "for use in connection
9 with unlimited" -- I'm sorry. Okay. So we went from 25,000 to
10 a larger unlimited number.

11 Q. Prior to January 25th, 2011, had Discover Tech agreed to
12 this additional \$3.6 million order?

13 A. No, we hadn't.

14 Q. Please look at what has been marked as Exhibit 1490 and is
15 in evidence.

16 What is the date of this email?

17 A. January 25th, 2011.

18 Q. At 2:02 p.m.?

19 A. Yes, sir.

20 Q. Is this Mr. Scott also sending you an unexecuted version
21 of a draft agreement dated December 31st, 2010 for
22 \$3.675 million?

23 A. Yes.

24 Q. If we could please display 1492.

25 What is the date of this email?

1 A. January 25th, 2011.

2 Q. What are you sending to Mr. Hyson?

3 A. I'm sending him the order, the agreement, so that he could
4 sign it and send it back.

5 Q. Why did you have Mr. Hyson execute agreements on behalf of
6 Discover Technologies?

7 A. As our CTO, I think it made sense to us to have him sign
8 these documents. He would be the one that would receive the
9 software.

10 There was also, I believe, in the beginning of our
11 relationship with Autonomy -- and I don't recall who suggested
12 it, but they wanted us to not just be a one-person company with
13 me signing everything. So that's what was, I believe --
14 initially why we wanted him to start signing, but it also made
15 sense.

16 MR. KEKER: Your Honor, excuse me. Does this exhibit
17 have an attachment --

18 THE COURT: Which one are we talking about?

19 MR. KEKER: Mine doesn't. 1492. Is it there in the
20 original? That's all I'm asking.

21 (Mr. Leach hands Mr. Keker a document.)

22 MR. KEKER: Thank you.

23 BY MR. LEACH:

24 Q. Mr. Truitt, are there four pages to Exhibit 1492?

25 A. Yes.

1 Q. If we could please now display 1485.

2 What is the date and time of this email?

3 A. January 25th, 2011 at 5:01 p.m.

4 Q. The attachment -- and this is from Mr. Hyson to you?

5 A. Yes.

6 Q. There's an attachment reference autn_boa. Do you see
7 that?

8 A. Yes.

9 Q. What is the attachment to this email?

10 A. The order, the updated order.

11 Q. Could we please look at page 2.

12 What is the date at the top?

13 A. December 31st, 2010.

14 Q. What is the amount?

15 A. 3,675,000.

16 Q. If we could please look at page 3.

17 Is that Mr. Hyson's signature?

18 A. Yes, it is.

19 Q. How did he date this order?

20 A. He dated it the day of -- the day that he was signing it.

21 Q. And the day when Discover Technologies agreed to it?

22 A. Correct.

23 Q. If we could please display 1491.

24 What is the date and time of this email?

25 A. January 25th, 2011, 5:32 p.m.

1 Q. And what is Mr. Scott sending to you in this email?

2 A. I think he's sending a revised order, and if I remember
3 correctly, the order has December 31st as the date for
4 signature.

5 Q. Please look carefully at page 2.

6 What is it Mr. Scott was sending to you?

7 A. This is a -- this is a Deloitte audit letter.

8 Q. What do you mean by "Deloitte audit letter"?

9 A. They would send us letters and they would -- they would
10 ask us whether we indeed agreed to do the -- whether we issued
11 an order and -- you know, for the amount.

12 Q. If we could please display 1500.

13 What is the date and time of this email?

14 A. January 26th, 2011, at 8:46 a.m.

15 Q. The day after Mr. Hyson executed the agreement?

16 A. Correct.

17 Q. If we could please look at page 2.

18 What is the date of the agreement?

19 A. December 31st, 2010.

20 Q. What is the amount?

21 A. 3,675,000.

22 Q. And if we could please look at the signature line.

23 Did you essentially forward the order as is to Mr. Egan at
24 Autonomy?

25 A. Yes.

1 Q. Please look at -- if we could please display 1516.

2 What is the date and time of this email?

3 A. Wednesday, January 26th, 1:28 p.m.

4 Q. This is from Mr. Hyson to you?

5 A. Yes.

6 Q. There's an attachment, autn_boa.pdf. Do you see that?

7 A. Yes.

8 Q. Please look carefully at pages 2 through 4 and let me know
9 what this is.

10 A. Are you going to display or am I going to -- what's the
11 number?

12 Q. 1516.

13 A. 2 through 4? Okay.

14 Q. What is the attachment in 1516?

15 A. It is the order again. And this time it has a date of
16 December 31st, 2010.

17 Q. If we could please display page 2.

18 What is the date at the top?

19 A. December 31st, 2010.

20 Q. What is the amount?

21 A. 3,675,000.

22 Q. And if we could please go to page 3 of the exhibit, you
23 noted that the date underneath Mr. Hyson's signature has
24 changed; is that right?

25 A. Yes.

1 Q. How did that come about?

2 A. I believe this was sent back to us by Mr. Scott or
3 Mr. Egan. I don't recall which. But when it came back, it had
4 the date obviously typed in.

5 Q. And did you or Mr. Hyson cause this executed order to be
6 re-sent to Autonomy?

7 A. We did.

8 Q. Please look at what has been marked as Exhibit 1529.

9 A. Sorry. Was that within this group of exhibits?

10 THE COURT: No.

11 THE WITNESS: Or is this different?

12 THE COURT: This wasn't previously admitted; right?

13 THE WITNESS: I see it.

14 MR. LEACH: 1529 has not yet been admitted.

15 THE COURT: Any objection?

16 MR. KEKER: No, Your Honor.

17 THE COURT: Admitted.

18 (Trial Exhibit 1529 received in evidence)

19 BY MR. LEACH:

20 Q. Is this a true and correct copy of bank records relating
21 to Discover Technologies' commercial checking accounts for the
22 period ending January 31st, 2011?

23 A. Yes.

24 Q. To the right, there are -- if we could scroll down just a
25 little please, Ms. Margen.

1 There is a deposit credit for \$400,000 on January 4th. Do
2 you see that?

3 **A.** Yes.

4 **Q.** What does that represent?

5 **A.** I don't recall.

6 **Q.** Okay. The \$1 million transfer down at the bottom, wire
7 Autonomy, Inc., in the amount of \$1 million, what does that
8 represent?

9 **A.** I believe that we -- for this particular deal, it was
10 similar to the last Citi and PMI deals where we -- in this
11 case, we put up \$1 million as a prepayment.

12 **Q.** Did Discover Tech ever deliver software to Bank of
13 America?

14 **A.** Not directly.

15 **Q.** Did it make any efforts to sell software to Bank of
16 America?

17 **A.** No. We were not working with the customer.

18 **Q.** Did Discover Tech have any relevant contacts with Bank of
19 America?

20 **A.** No.

21 **Q.** Would you say that Autonomy controlled what to sell to
22 Bank of America on what terms and when?

23 **A.** I would say that's -- that's fair; that the documents that
24 we signed were the terms of the agreement.

25 **THE COURT:** I'm sorry. Let me ask a question.

1 You said in response to one of the earlier questions that
2 you were not -- you and your company were not involved directly
3 in the delivery of software to Bank of America. Is that
4 accurate?

5 **THE WITNESS:** Yes.

6 **THE COURT:** Well, do you distinguish between directly
7 and indirectly? Are you making a distinction?

8 **THE WITNESS:** Well, the distinction, I think, would be
9 that the order happened. They ultimately did purchase --

10 **THE COURT:** Speak up.

11 **THE WITNESS:** They ultimately did purchase the
12 software in the amounts that we had ordered them. But we did
13 not directly acquire the software and then hand it to the -- to
14 the bank. So they bought it directly from Autonomy.

15 Or actually that's not even true in this case. I believe
16 they bought it from MicroTech. I'm sure we are getting here in
17 a minute.

18 **MR. LEACH:** We will get there soon.

19 Is that responsive to the Court's question?

20 **THE COURT:** Thank you.

21 **BY MR. LEACH:**

22 **Q.** Did Discover Technologies make any efforts to resell
23 software to Bank of America?

24 **A.** No.

25 **Q.** Did Autonomy control what to sell to Bank of America at

1 what price and when?

2 **MR. KEKER:** Objection. Asked and answered.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** Yes.

5 **BY MR. LEACH:**

6 **Q.** Please look at what has been marked as Exhibit 1466.

7 **A.** Okay.

8 **Q.** I'm sorry. I misspoke.

9 1446, Mr. Kecker.

10 Is this a true and correct copy of an email from Steve
11 Truitt with a copy to you, to Stouffer Egan, on or about
12 January 14th, 2011?

13 **A.** Yes, it is.

14 **THE COURT:** Admitted.

15 (Trial Exhibit 1446 received in evidence)

16 **BY MR. LEACH:**

17 **Q.** Mr. Truitt, what is the subject of this email exchange?

18 **A.** Autonomy indicated that Bank of America would be
19 interested in working with a company that had 8(a) designations
20 so they preferred to set aside business for 8(a) companies,
21 much like we talked about earlier.

22 MicroTech, as we discussed, is -- was an 8(a) company, and
23 so this -- this is a -- this is effectively proving that we
24 have our 8(a) -- MicroTech had their 8(a) certification from
25 the Small Business Administration.

TRUITT - DIRECT / LEACH

1 Q. Did Discover Technologies have this 8(a) status?

2 A. No.

3 Q. How come?

4 A. I do not qualify.

5 Q. Did you ever tell anybody at Autonomy that Discover
6 Technologies had this 8(a) status?

7 A. No.

8 Q. Please look at what has been marked as Exhibit 1585.

9 A. Okay.

10 Q. Strike that, Mr. Truitt. I don't -- you're not on the top
11 portion of this email, so I don't think it's a topic for your
12 examination.

13 I'd like to move forward in time to the end of the first
14 quarter of 2011 and the start of the second quarter of 2011.
15 Do you have that time period in mind?

16 A. Yes.

17 Q. At the end of March of 2011, were you again approached by
18 someone at Autonomy about doing an end-of-quarter deal?

19 A. Yes. Mr. Egan contacted me and we discussed a number of
20 potential deals.

21 Q. What did Mr. Egan say to you?

22 A. He went through, again, the deals one at a time. We
23 talked specifics about where they were in the sales cycle,
24 amounts, when they expected to close. You know, that was kind
25 of generally the discussion that we had, and that could have

1 been, you know, within the last few days of the quarter.

2 Q. Please look at what has been marked as Exhibit 1684.

3 A. Okay.

4 Q. Is this a true and correct copy of an email you received
5 from Joel Scott on or about March 31st, 2011?

6 A. Yes.

7 THE COURT: Admitted.

8 (Trial Exhibit 1684 received in evidence)

9 BY MR. LEACH:

10 Q. What is the subject of this email, Mr. Truitt?

11 A. This is a one-off reseller agreement for the purposes of a
12 deal with ThinkTech.

13 Q. Is there another draft other than ThinkTech?

14 A. Yes. I'm sorry. There is also one for -- for FINRA.

15 Q. What did Mr. Egan tell you about FINRA and ThinkTech?

16 A. I don't remember the specifics, other than we went through
17 them at the time and he gave me indication that they were very
18 close to closing, and, you know, we talked about the specifics,
19 but I can't recall the . . .

20 Q. Were you interested in doing these deals if they weren't
21 very close to closing?

22 A. No. That would not have been my interest.

23 Q. Did Discover Technologies ultimately sign purchase orders
24 in respect of FINRA and ThinkTech?

25 A. Yes.

1 Q. Do you recognize what has been marked as Exhibit 1687?

2 A. Yes.

3 Q. Is this a true and correct copy of an email from Malcolm
4 Hyson to you dated March 31st, 2011, attaching executed
5 versions of orders for FINRA and ThinkTech?

6 A. Yes.

7 THE COURT: Admitted.

8 (Trial Exhibit 1687 received in evidence)

9 BY MR. LEACH:

10 Q. Let me draw your attention to the top portion of this
11 email, Mr. Truitt.

12 Do you see the date, March 31st, 2011, 10:33 p.m.?

13 A. Yes.

14 Q. On or before March 31st, 2011, were there any other
15 agreements between Discover Technologies and Autonomy in
16 respect of reselling software, other than these two and the
17 ones we've seen previously?

18 A. No.

19 Q. Please look at page 2.

20 Is this the FINRA order?

21 A. Yes, it is.

22 Q. What is the amount?

23 A. Sorry. Trying to find it.

24 THE COURT: Look at the screen.

25 \\

1 BY MR. LEACH:

2 Q. It's in paragraph 2 on the screen.

3 A. One million.

4 Q. Please look at page 4. Do you see the Attachment A?

5 A. Yes.

6 Q. And do you see the software in respect of this order is
7 Introspect Discovery Solution, Autonomy Investigator ECA,
8 Autonomy Legal Hold, etc.?

9 A. Yes.

10 Q. And if you look in the "authorized use" in paragraph 8, do
11 you see a reference to "200 End User"?

12 A. Yes.

13 Q. Please look at page 6.

14 Is this the ThinkTech order?

15 A. Yes, it is.

16 Q. What was the amount?

17 A. 1,800,000.

18 Q. At March 31st, 2011, did Discover Tech have the ability to
19 pay for the ThinkTech and FINRA orders if they didn't sell
20 through?

21 A. Probably not. I have to look at our bank statement, but I
22 would say probably not. We probably would have had to make
23 additional contributions to the company.

24 Q. Did Discover Tech have any relevant contacts with FINRA or
25 ThinkTech?

1 A. We had no contacts with either organization.

2 Q. Did Discover Tech make any efforts to resell software to
3 FINRA or ThinkTech?

4 A. No.

5 Q. Would you say that Autonomy exercised control over what to
6 sell to those folks when and at what price?

7 A. Yes. Again, you know, those -- those are kind of stated
8 here in these agreements. I think that that -- that was
9 determined.

10 Q. Do you recall testifying before a grand jury, Mr. Truitt?

11 A. Yes, I do.

12 Q. And you swore an oath to tell the truth?

13 A. Yes, sir.

14 Q. And you take that oath very seriously?

15 A. Yes, sir.

16 Q. And this was on June 9th, 2015?

17 THE COURT: Is it an exhibit?

18 MR. LEACH: It's not an exhibit, Your Honor. It's
19 grand jury testimony.

20 THE COURT: Will you identify what page and so forth
21 so I can look at it?

22 MR. LEACH: I'm laying a foundation and then I'll
23 identify the page.

24 THE CLERK: Do you have a copy?

25 THE COURT: I don't have a copy, but I'll be handed

1 one in a minute.

2 MR. LEACH: Please hand this to the Court. It's page
3 58.

4 THE COURT: What page and what lines?
5 Mr. Keker, do you have a copy of it?

6 MR. KEKER: I do, Your Honor.

7 THE COURT: What page?

8 MR. LEACH: Page 58, line 20 to line 23.

9 THE COURT: All right. You may ask the question on
10 line 20 and the response on line 23. Just read it. Just read
11 it. You don't have to go up.

12 BY MR. LEACH:

13 Q. Mr. Truitt, were you asked the question: "Is it fair to
14 say that Autonomy exercised control over what to sell to FINRA
15 and ThinkTech when and on what terms?"

16 A. Yes. I believe I'm --

17 THE COURT: Well, wait. The answer --

18 BY MR. LEACH:

19 Q. And did you answer "yes"?

20 A. Yes.

21 THE COURT: Okay.

22 THE WITNESS: I'm saying the same thing here.

23 THE COURT: Actually that's the question. Okay.

24 BY MR. LEACH:

25 Q. That was your testimony, sir?

1 A. And it's still my testimony.

2 THE COURT: Okay. Thank you.

3 Lashanda, do you want to give that back, please.

4 THE CLERK: Yes.

5 BY MR. LEACH:

6 Q. Did you have an understanding at the time that Autonomy
7 would have responsibility for consummating the sales with FINRA
8 and ThinkTech?

9 A. Yes. That is the way it worked.

10 Q. At some point after April 1st, 2011, did Stouffer Egan
11 approach you about doing another deal for the first quarter of
12 2011?

13 A. Yes, he did.

14 Q. Please look at what has been marked as Exhibit 1725. Do
15 you recognize this?

16 A. Yes.

17 Q. Is this a copy of an email that includes an Instant
18 Message exchange between you and Malcolm Hyson on April 4th,
19 2011?

20 A. Yes.

21 THE COURT: Admitted.

22 (Trial Exhibit 1725 received in evidence)

23 BY MR. LEACH:

24 Q. Let me draw -- this appears to be an email, Mr. Truitt,
25 but there is a back and forth dialogue between you and

1 Mr. Hyson. Can you explain what you understand to be?

2 **A.** I believe that this is an IM session that Mr. Hyson and I
3 had, and perhaps those were captured in email form. I'm not
4 exactly sure why it's in the form of an email, but it appears
5 to be an IM conversation.

6 **Q.** Okay. Mr. Hyson begins, "Are you in the office?"

7 **THE COURT:** Could you explain what IM is?

8 **THE WITNESS:** Instant --

9 **THE COURT:** For those of us who are less enlightened
10 by technology.

11 **MR. LEACH:** Excellent point, Your Honor. Thank you.

12 **Q.** What do you mean by IM?

13 **A.** Instant Messaging within an organization so that it
14 doesn't go through an official email process. It just kind of
15 pops up on the screen, and you can go back and forth. It's
16 kind of like texting might be with phones, but it's occurring
17 on your computer.

18 **THE COURT:** Thank you.

19 **BY MR. LEACH:**

20 **Q.** Mr. Hyson begins here:

21 "Are you in the office tomorrow?"

22 "Ya" -- and you respond: "Ya, we have that meeting in the
23 afternoon."

24 "Cool, want to do an impromptu happy hour after work?"

25 You answer: "Sure."

1 And you write: "Hey, question, if someone says 'pdf me an
2 email', does that simply mean email with a pdf attachment?"

3 What are you referring to there, Mr. Truitt?

4 **A.** I was asking a question. I had never -- I had never heard
5 that kind of request before, so from a technical perspective, I
6 was asking my CTO what he thought it meant because I was
7 confused.

8 **Q.** When Mr. Egan reached out to you to take another order for
9 March 2011, what did he say to you?

10 **A.** He said that he wanted me to -- "pdf me an email," and --
11 and I -- I believe that it had something to do with the date
12 not changing on the pdf. He wanted to get a pdf; not a Word
13 document or an email. So send him a pdf in an email of -- of
14 the order.

15 **Q.** You then wrote, "Autonomy wants to pdf an order. Said it
16 will not change the date on the document if it is a pdf."

17 Do you see that?

18 **A.** Yes.

19 **Q.** Is that a reference to your conversation with Mr. Egan?

20 **A.** Yes.

21 **Q.** Okay. Please look at what has been marked as Exhibit 726.

22 **A.** 1726?

23 **Q.** 1726, please.

24 **A.** Okay.

25 **Q.** Is this a true and correct copy of an email from you to

1 Malcolm Hyson on April 4th, 2011?

2 A. Yes.

3 THE COURT: Admitted.

4 (Trial Exhibit 1726 received in evidence)

5 BY MR. LEACH:

6 Q. Let me draw your attention to the attachment, Mr. Truitt.
7 It says, "Prisa VAR letter agreement." What does that refer
8 to?

9 A. That refers to a new deal with an organization called
10 Prisa that we were going to issue a purchase order for.

11 Q. What is Prisa?

12 A. They're an organization up in New Jersey, I believe, that
13 was an Autonomy customer at the time.

14 Q. Had you heard of them before?

15 A. I had not.

16 Q. Did you have any relevant contacts with them?

17 A. No.

18 Q. Let's please look at the attachment.

19 Mr. Truitt, you testified you believed that Prisa was
20 based in New Jersey. Could they be a Spanish media company
21 somewhere in Europe?

22 MR. KEKER: Objection. Leading, Your Honor.

23 THE WITNESS: I don't know anything about Prisa, so --

24 THE COURT: Sustained.

25 THE WITNESS: So for whatever reason, I thought they

1 might be in New Jersey. I thought perhaps Mr. Egan had said
2 that, but I could be wrong.

3 **BY MR. LEACH:**

4 **Q.** In any event, you had never heard of them?

5 **A.** Correct.

6 **Q.** What is the date of this draft agreement?

7 **A.** March 31st, 2011.

8 **Q.** What is the amount in paragraph 2?

9 **A.** 3.8 million.

10 **Q.** That's the 3.6 licensing fee with the \$200,000 in
11 maintenance?

12 **A.** 3.6 million.

13 **Q.** Please look at page 3 of the exhibit.

14 Are those the blank signature lines for Autonomy and
15 Discover Technologies?

16 **A.** Yes, sir.

17 **Q.** Please look at page 4.

18 What is the software that is the subject of this draft
19 agreement?

20 **A.** Introspect Discovery Solution, Autonomy Investigator and
21 ECA. It's their legal hold, their EDD software.

22 **Q.** Was this the software that was being -- that was the
23 subject of the FINRA order?

24 **A.** Yes.

25 **Q.** And further down in the "authorized use," Row 8, there is

1 a reference to "200 End User." Do you see that?

2 A. Yes.

3 Q. Was that the amount of the FINRA order as well?

4 A. Yes.

5 Q. Were you concerned about what Mr. Egan was asking you to
6 do?

7 A. Yes, I was.

8 Q. Why?

9 A. Because it was out of the normal course of what I had seen
10 over many years of business in terms of respecting the end of
11 the quarter.

12 I've testified to kind of the Vatican call because that
13 was a MicroTech deal. That one really didn't resonate too much
14 with me, and the Bank of America one was so far after the end
15 of the quarter I really didn't even consider it to be an
16 end-of-quarter scenario.

17 But this one to me was very concerning because it was out
18 of the norm of what I knew business to be.

19 Q. Please look at what has been marked as Exhibit 1730.

20 Is this a true and correct copy of an email from Jorge
21 Salazar to you attaching executed versions of reseller
22 agreements for ThinkTech, FINRA and Prisa?

23 A. Yes.

24 THE COURT: Admitted.

25 (Trial Exhibit 1730 received in evidence)

1 BY MR. LEACH:

2 Q. Let me please draw your attention to page 9 -- excuse
3 me -- page 2.

4 What is the date at the top, Mr. Truitt?

5 A. March 31st, 2011.

6 Q. Who is the end user listed in the first paragraph?

7 A. Prisa.

8 Q. What is the amount in paragraph 2?

9 A. 3.6 million.

10 Q. And if you could please look at page 2 or page 3 of the
11 exhibit, is that Mr. Hyson's signature?

12 A. Yes, it is.

13 Q. What is the date listed?

14 A. March 31st, 2011.

15 Q. Is that Mr. Egan's signature to the left?

16 A. Yes.

17 Q. What is the date?

18 A. March 31st, 2011.

19 Q. At some point after your conversation with -- well, you
20 testified that you were concerned about what Mr. Egan was
21 asking you to do; is that right?

22 A. Yes.

23 Q. Did you do anything about it?

24 A. I did. I -- I reached out to both Mr. Egan and Mr. Scott
25 and let them know that I was concerned about what I had been

1 asked to do.

2 They indicated that Mr. Hussain happened to be in
3 San Francisco, so he was in the country, and I requested a
4 meeting with Mr. Hussain to discuss my concerns.

5 Q. Why did you want to meet with Mr. Hussain?

6 A. I wanted to make sure that I wasn't doing anything
7 improper. I did not want to put myself in a situation where I
8 could be in trouble.

9 Q. Please look at what has been marked as Exhibit 1769.

10 Is this a true and correct copy of an email that you sent
11 to Mr. Hussain and Mr. Egan on April 14th, 2011?

12 A. Yes, it is.

13 THE COURT: Admitted.

14 (Trial Exhibit 1769 received in evidence)

15 BY MR. LEACH:

16 Q. The subject of this email is "Today's Meeting." Do you
17 see that, Mr. Truitt?

18 A. Yes.

19 Q. Did you meet with Mr. Hussain on or about April 14th,
20 2011?

21 A. I did.

22 Q. Who was there?

23 A. Mr. Hussain and Mr. Egan.

24 Q. Where was it?

25 A. In the corporate headquarters here in San Francisco.

1 Q. Down in the Financial District?

2 A. Yes, sir.

3 Q. Take a moment and describe for us what happened.

4 A. Well, I started out simply saying that, you know -- that I
5 was concerned; that, you know, what I experienced -- what I was
6 asked to do with this order seemed to be out of the normal
7 course of business that I was used to, and I wanted to, you
8 know -- to hear why, you know, that was okay. So I put that
9 question to Mr. Hussain.

10 The answer was -- he indicated that -- first of all, that
11 Autonomy was -- was not traded on a U.S. exchange; it was
12 traded out of the UK. They were under international accounting
13 rules. It was really the first time that IFRS had been brought
14 up to me and, you know, potential differences in accounting
15 between IFRS and GAAP.

16 He also indicated that, you know, being on the UK
17 exchange, that it really wasn't a -- under the purview of the
18 SEC. This was international accounting and that -- and that
19 there were some flexibility there where they could account for
20 this properly.

21 Q. You mentioned something called the SEC. What is the SEC?

22 A. The Securities and Exchange Commission.

23 Q. What is that?

24 A. That is a federal organization that regulates -- regulates
25 trade and financial matters within -- that affect United States

1 citizens.

2 Q. And what did Mr. Hussain say with respect to the SEC?

3 A. He said that -- that this does not fall within the purview
4 of the SEC.

5 Q. You also testified that you didn't want to do anything
6 that could get you in trouble; is that correct, Mr. Truitt?

7 A. That's correct.

8 Q. Did you express that concern to Mr. Hussain?

9 A. I did.

10 Q. What did you say to him?

11 A. I believe what I said exactly was I didn't want to do
12 anything that could have me wind up on front page of *The Post*.

13 Q. What did you mean by "*The Post*"?

14 A. *The Washington Post*.

15 Q. That's a newspaper?

16 A. Yes, sir.

17 Q. And did you -- the concern that you're raising to
18 Mr. Hussain, did you mention Prisa?

19 A. We spoke specifically about Prisa. I -- that was the deal
20 that I was concerned about. I wasn't -- I was concerned about
21 other deals. You know, that deal had just happened. This was
22 a -- the meeting was, you know -- was about ten days later.

23 I knew that we were going to have to sign off on an audit
24 letter. I wanted to have this conversation prior to doing
25 that.

TRUITT - DIRECT / LEACH

1 **Q.** And did you articulate that it was the dating of the Prisa
2 agreement that was causing you concern?

3 **A.** Yes. Very specifically.

4 **Q.** Let me move forward in time, Mr. Truitt, to the end of
5 June, 2011.

6 At the end of that quarter, were you approached about
7 doing additional end-of-quarter deals?

8 **A.** Yes.

9 **Q.** Who approached you?

10 **A.** Mr. Egan.

11 **Q.** Please look at what has been marked as Exhibit 1971.

12 Is this a true and correct copy of an email from Jorge
13 Salazar to you attaching a purchase order relating to Abbot
14 Labs?

15 **A.** Yes, it is.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 1971 received in evidence)

18 **BY MR. LEACH:**

19 **Q.** Do you see the subject "Discover Tech/Abbot Labs
20 Agreement," Mr. Truitt?

21 **A.** Yes.

22 **Q.** Was this one of the possible deals that Mr. Egan
23 approached you about?

24 **A.** Correct.

25 **Q.** What did he tell you?

1 A. Again, he told me that this was an existing customer of
2 Autonomy; that I believe it was another just increase of, you
3 know -- of what they were already performing that was going to
4 be necessary in the next -- you know, in the near term.

5 Q. What did he tell you about the prospects of the deal
6 closing?

7 A. You know, he always -- they were always close, right, so
8 the deal was going to happen sometime soon.

9 Q. Please look at page 2 of this agreement.

10 Do you see the reference to Abbot Labs in the first
11 paragraph?

12 A. Yes.

13 Q. What was the amount of this agreement?

14 A. This was 9 million.

15 Q. Did Discover Tech have the money to pay for that if the
16 software didn't sell through?

17 A. No. Not within the company.

18 Q. Did Discover Tech make any efforts to resell software to
19 Abbott?

20 A. No.

21 Q. Would you say Autonomy exercised control over what to sell
22 to Abbott and on what terms?

23 A. Yes.

24 Q. I'd like to show you what is already in evidence as
25 Exhibit 1840.

1 THE COURT: 1840?

2 MR. LEACH: Yes. It's already in evidence.

3 THE COURT: Thank you.

4 BY MR. LEACH:

5 Q. Mr. Truitt, do you see the subject line "Abbott" in the
6 initial email in this chain?

7 A. Yes.

8 Q. And there's someone named David Wilner at Autonomy. Do
9 you have any idea who he is?

10 A. No.

11 Q. Okay.

12 At any point in time, were you told that a senior attorney
13 was vetoed by the general counsel of Abbott who said that they
14 will never authorize forward-looking commitments and that there
15 was nothing left to be done?

16 A. I'm sorry. Are you asking whether I was told that?

17 Q. Yes.

18 A. No, I was not.

19 Q. Would this information have been relevant to you in
20 deciding whether to sign a purchase order relating to selling
21 software to Abbott?

22 A. Yes. If -- if that had been presented in that manner, I
23 would not have been interested in a deal.

24 Q. Why not?

25 A. Well, I wanted these deals to close in a quick period of

1 time so that we could make our margin and move on.

2 Q. Please look at what has been marked as Exhibit 1972.

3 Is this a true and correct copy of an email from Jorge
4 Salazar to you attaching another reseller agreement for the end
5 of June 2011?

6 A. Yes, it is.

7 THE COURT: Admitted.

8 (Trial Exhibit 1972 received in evidence)

9 BY MR. LEACH:

10 Q. I draw your attention to page 2, Mr. Truitt.

11 Who is the end user that is the subject of this agreement?

12 A. This is Dell Hyatt.

13 Q. What is the amount of this order?

14 A. This one is 5,333,914.

15 Q. Did Discover Tech have any relevant contacts at Dell or
16 Hyatt?

17 A. No, sir.

18 Q. Did it make any efforts to resell them software?

19 A. No.

20 Q. Would you say that Autonomy exercised control over what to
21 sell to Dell or Hyatt and on what terms and at what price?

22 A. Yes.

23 Q. Please look at what has been marked as Exhibit 1901.

24 Do you recognize this document?

25 A. It's hard for me to read.

1 Q. Is this a Software Distributor Agreement with an effective
2 date of June 30th, 2011?

3 A. I'm sorry. The print is so small, I can't read it.

4 Q. Is that your signature on page 4?

5 THE COURT: Any objection?

6 MR. KEKER: No, Your Honor.

7 THE COURT: Admitted.

8 THE WITNESS: Yes, that's my signature.

9 (Trial Exhibit 1901 received in evidence).

10 BY MR. LEACH:

11 Q. Do you have a memory of licensing Discover Tech software
12 to Autonomy at the end of June, 2011?

13 A. Yes.

14 Q. Describe that negotiation for us.

15 A. Well, that's actually the other thing that we -- we did
16 discuss when I went out to meet with Mr. Hussain several months
17 earlier. We talked about our software.

18 This software is the -- what we called at the time our
19 Discover Engine product. It was designed to improve indexing
20 and crawling for -- for Autonomy software. So it was relevant
21 to -- to Autonomy's business.

22 And this appears to be a signed agreement that they are
23 going to purchase some amount of that software.

24 Q. Let me draw your attention to page 5, and perhaps we can
25 use the screen where it's a little easier to see, Mr. Truitt.

1 What is the software product in Item 1?

2 A. DiscoverPoint Engine.

3 Q. And if we look further below under the license fee, in the
4 last line of that first paragraph, it says, "Payable net 30
5 days after effective date subject to a 1 percent discount if
6 payment is made upon execution of the agreement."

7 Do you see that?

8 A. Yes.

9 Q. And then there are two options: 2.75 million and
10 2.4 million. Do you see that?

11 A. Yes.

12 Q. How were these -- during the negotiations for this, was
13 there any discussion about how Discover Tech would use the
14 money for this software agreement?

15 A. I'm not sure that there was ever a discussion -- a
16 specific discussion about how the funds would be used, but it
17 was clear that we owed money to Autonomy, and so if we could
18 put together a deal that was relevant to both companies, it
19 certainly would give me an opportunity use those funds to pay
20 down some of those debts.

21 MR. LEACH: May I approach the witness, Your Honor?

22 Q. Mr. Truitt, I'm showing you your grand jury testimony. If
23 you could please read from page 69, line 14, to line 8 on the
24 next page.

25 A. It says, "Can you describe for us" --

1 **THE COURT:** Just read it to yourself. Just read it to
2 yourself. You don't need to read it out loud.

3 **THE WITNESS:** (Witness reviews document.)

4 4.4. That's not what you're showing here, but, okay.

5 Okay.

6 **BY MR. LEACH:**

7 **Q.** Have having read that, Mr. Truitt, does that refresh your
8 recollection about how the pricing was determined for the
9 software purchase at the end of 2011?

10 **A.** Yes. What is on the screen now were some initial options
11 that we had talked about.

12 The software was purchased by the instance, and instances
13 were determined by how fast -- how fast a -- an Autonomy IDOL
14 customer would want to crawl and index content.

15 So, for example, at the time, Autonomy software was --
16 Autonomy software was limited to one server for crawling
17 purposes. Our software enabled organizations to apply dozens
18 of servers, if they wanted to. So if they had lots of data,
19 they could crawl through it much quicker.

20 So that is what "instances" mean here.

21 This proposal for 2.4 million ultimately increased. I
22 think the -- the ultimate that we settled on at this point was
23 4.4 -- 4.4 million, so they purchased more instances than is
24 shown here.

25 The discussion in terms of the increase from 2.4 million

1 to 4.4 million did center around --

2 **MR. KEKER:** Objection, Your Honor. Foundation. Who's
3 talking?

4 **BY MR. LEACH:**

5 **Q.** You're describing a conversation with someone, Mr. Truitt?

6 **A.** With -- with Mr. Egan, I believe. That's who I was -- I
7 was having these discussions with.

8 **Q.** Okay.

9 **A.** The question came would we be willing to -- if they were
10 to purchase more instances and taking this from 2.4 up to 4.4,
11 would Discover -- would we be willing to take 2.4 million of
12 those proceeds and work the additional funds through MicroTech,
13 and what I did -- and effectively MicroTech would then be able
14 to pay down some of their Autonomy debts.

15 I agreed -- after speaking with MicroTech, I came up with
16 my own deal with them to effectively -- if I were to make this
17 contribution, I could -- I could benefit when the deal -- we
18 still expected this deal to close, so I could get some -- some
19 margin on my investment, and they also said that I could
20 participate in the services when and if those services actually
21 arrived within the Vatican.

22 So from my perspective, they were buying more instances,
23 and I was happy to invest in that Vatican deal, and I think
24 what MicroTech did was use those funds to pay down that --
25 their debt.

TRUITT - DIRECT / LEACH

1 **Q.** So the idea you discussed with Mr. Egan was pay
2 4.4 million and you would transfer part of that -- Discover
3 Tech would transfer part of that to MicroTech. Is that what
4 you're saying?

5 **A.** That's what I'm saying.

6 **Q.** And MicroTech would use that money to do what?

7 **A.** Pay down their Vatican debt.

8 **Q.** Please look at what has been marked as Exhibit 1902.

9 Are these Discover Tech's -- are these records, bank
10 records, for Discover Technologies for the end of June, 2011?

11 **A.** Yes.

12 **THE COURT:** Admitted.

13 (Trial Exhibit 1902 received in evidence)

14 **BY MR. LEACH:**

15 **Q.** I draw your attention, Mr. Truitt, to page 2. There's a
16 \$4.4 million wire into Discover Technologies on June 30th. Do
17 you see that?

18 **A.** Yes.

19 **Q.** What was that for?

20 **A.** That was for our software, Discover Engine, that Autonomy
21 purchased.

22 **Q.** Now, could you please look at Exhibit 2059.

23 Are these bank records for Discover Technologies for July
24 2011?

25 **A.** Yes, they are.

1 **THE COURT:** Admitted.

2 (Trial Exhibit 2059 received in evidence)

3 **BY MR. LEACH:**

4 **Q.** I draw your attention to the debit on July 1st in the
5 amount of \$2.4 million. Do you see that?

6 **A.** Yes.

7 **Q.** What was that for?

8 **A.** Those were funds going from our bank account over to
9 MicroTech.

10 **Q.** And what did you understand MicroTech was going to do with
11 that money?

12 **A.** They were going to pay down the Vatican debt.

13 **Q.** Were there any written agreements between you and others
14 at MicroTech relating to your ownership interest in the Vatican
15 deal?

16 **A.** No.

17 **Q.** I draw your attention to the time period after
18 August 18th, 2011.

19 At some point, did you learn that Autonomy was being
20 acquired by HP?

21 **A.** I did.

22 **Q.** How did you learn about that?

23 **A.** I heard it on the news.

24 **Q.** At some point between August 18th, 2011, and the end of
25 September, 2011, did you have a discussion with Sushovan

1 Hussain about some of the outstanding debts for Discover Tech?

2 **A.** Yes.

3 **Q.** Take a moment and tell us what happened.

4 **A.** Well, we -- you know, I was concerned as to how those
5 would be handled with the news that HP was taking over.

6 He informed me that for the last two deals, I believe that
7 was Abbott and Dell Hyatt, that they were going to cancel those
8 deals.

9 **THE COURT:** I'm sorry. Who is speaking to you? You
10 said "they." Who is the --

11 **THE WITNESS:** This is a conversation I had with
12 Mr. Hussain by telephone.

13 So he indicated that they were going to cancel -- cancel
14 those deals. And in that discussion, you know, I wasn't really
15 overly happy about that outcome. You know, we had written the
16 purchase orders. Not knowing whether they were going to close
17 those deals and kind of cut me out of the loop or -- you know,
18 I wasn't really sure what was going to happen with them.

19 But the way that the conversation ended, Mr. Hussain said
20 that he would pay me margin on those canceled deals, even
21 though we weren't going to be involved. And that was -- I was
22 very happy about that outcome.

23 So that's the way that -- we left that conversation.

24 **BY MR. LEACH:**

25 **Q.** Was there also a discussion about any --

1 **MR. KEKER:** Objection. Leading.

2 **THE COURT:** Overruled.

3 **BY MR. LEACH:**

4 **Q.** Did the topic of Prisa or ThinkTech come up?

5 **A.** Yes. Those were still outstanding as well, and we -- we
6 had a discussion regarding potentially more instances of our
7 product, which would enable me to then pay down some of that
8 obligation.

9 They did go back, and over a period of a week or two, they
10 determined, you know, how much more of that they could buy, and
11 we did a few more of those purchases over the next month or so.

12 **Q.** Would you please look at what has been marked as Exhibit
13 2381.

14 **A.** Okay.

15 **Q.** Before I ask you questions about this document,
16 Mr. Truitt, let me just make sure I'm clear.

17 The conversation about additional purchases of instances
18 of discover software, that was in your phone conversation with
19 Mr. Hussain; is that right?

20 **A.** Yes.

21 **Q.** Do you recognize Exhibit 2381 as a true and correct copy
22 of an email you received from Joel Scott on or about
23 September 26th, 2011?

24 **A.** Yes.

25 **THE COURT:** Admitted.

(Trial Exhibit 2381 received in evidence)

BY MR. LEACH:

Q. Let me draw your attention to the bottom portion of this email, Mr. Truitt. The subject is "Cancellation of VAR agreements." What did that refer to?

A. After my conversation with Mr. Hussain where he told me that they were going to cancel those deals, I had a conversation with -- with Mr. Egan. He asked me to formally write an email requesting that the orders be canceled, and that's -- this was my attempt to do that.

Q. You wrote, "I am writing to formally request that VAR agreements signed June 30th between Discover Technologies and Autonomy regarding Abbot Labs and Dell Hyatt be canceled. Per my discussions with Stouffer, under the condition that the end user, end customer, did not ultimately license the proposed Autonomy software, the agreements would be canceled with no further obligation on the part of Discover Technologies."

What did you mean by that?

A. I was simply trying to write an email canceling these deals. In all of the years that we had done deals going back to 2006, we had never canceled a deal.

The wording that I used here, I would say, is not correct in the sense that there was never an understanding that if an end customer didn't buy, that I could cancel the deals with no further obligation.

TRUITT - DIRECT / LEACH

1 Clearly once I sent this over, Mr. Scott shot back
2 immediately and said that I must have misunderstood, but given
3 that I haven't closed the deals and -- probably the way they
4 wanted me to write it -- there is no prospect of us getting
5 paid, we're prepared to write these off.

6 So I simply didn't capture the spirit of what they wanted
7 me to say in that email.

8 Q. Did you ever pay \$9 million to Autonomy for software at
9 Abbot Labs?

10 A. No.

11 Q. Did you ever pay \$5 million for software to -- did you
12 ever pay Autonomy \$5 million for software relating to Dell
13 Hyatt?

14 A. No. I -- I received credit memos back saying that the
15 deals were canceled.

16 Q. After this email, did you continue to pursue Mr. Hussain
17 for the margin you felt you were owed on those two deals?

18 A. Ad nauseam, yes. I continued to try and collect on the
19 margin.

20 Q. Do you recognize what has been marked as Exhibit 2454?

21 A. Yes, I recognize it.

22 Q. Is this a true and correct copy of an email that you sent
23 to Mr. Hussain and Mr. Kanter?

24 A. Yes.

25 THE COURT: Admitted.

(Trial Exhibit 2454 received in evidence)

BY MR. LEACH:

Q. You write at the top, Mr. Truitt, "I have attempted multiple times to start a dialogue regarding outstanding issues."

Do you see that?

A. Yes.

Q. What are you referring to?

A. I'm referring to the margin that I believed that I was owed, and it also indicates that there was an outstanding last payment to Prisa -- for Prisa.

Q. You wrote, "Sushovan has given me his commitment that the margin for these POs would be paid in full, and while I appreciate and trust his commitment, I need to have specific discussions as to how and when those payments will be made."

Do you see that?

A. Yes.

Q. What did you mean by that?

A. Well, I had had no contact for several months regarding this issue, so I -- I had -- I had reached out, I had made phone calls, you know, I had sent texts. I just hadn't had any response.

So I was, once again, trying to initiate a conversation around collecting what I -- what I thought I was owed.

Q. After Mr.-- did Mr. Hussain ever get back to you?

1 A. No, he didn't.

2 Q. Did you continue to pursue Mike Lynch?

3 A. I did.

4 Ultimately after -- after I learned -- eventually
5 Mr. Kanter got back to me and told me we had a meeting in
6 Baltimore -- I believe he was flying through the country --
7 that they were not going to pay me anything in the way of
8 margin on these deals.

9 At that point, I reached out to Mr. Lynch a few times
10 through emails and wanted to make sure that he was in agreement
11 with the -- with what their decision was around it.

12 Q. Please look at what has been marked as Exhibit 2459.

13 Do you recognize this?

14 A. Yes.

15 Q. Is this a true and correct copy of an email to you from
16 Mr. Hyson with your dialogue with Mike Lynch?

17 A. Yes.

18 THE COURT: Admitted.

19 (Trial Exhibit 2459 received in evidence)

20 BY MR. LEACH:

21 Q. I draw your attention to page 2, Mr. Truitt.

22 Do you see where it says, "Sushovan, I've waited patiently
23 over the past four months for you to engage with me concerning
24 the margin fees owed to Discover"?

25 A. Yes.

TRUITT - DIRECT / LEACH

1 Q. What did you mean by that?

2 A. That I had waited patiently over the last four months for
3 him to engage with me over margin fees that were owed to
4 Discover.

5 Q. Thank you.

6 Further down below, you say, "Based on you saying 'I am a
7 man of my word, you will be paid', I made investments in my
8 company, hired personnel whose jobs are now in jeopardy without
9 a payment from Autonomy."

10 First of all, did Mr. Hussain say that, "I'm a man of my
11 word, you will be paid"?

12 A. Yes, he did, on the phone when we were discussing the
13 cancellation of the deals.

14 Q. And what did you mean by this?

15 A. I meant that I had made investments in my company,
16 including hiring personnel, significant investments, and I had,
17 you know -- would not have done that -- now we're four months
18 in. I was expecting to get a large payment, and truly those
19 folks were now in jeopardy because -- and actually I was at
20 that point much worse off because I just simply would not have
21 hired those folks if I wasn't sure that those funds were coming
22 my way.

23 Q. You go on to write, "I went above and beyond as your
24 trusted partner to put Autonomy in a position to close that
25 revenue."

TRUITT - DIRECT / LEACH

1 What did you mean, "close that revenue"?

2 **A.** I'm talking about in that sentence -- I'm talking about
3 the -- not the two that were canceled, but ThinkTech and Prisa
4 where -- and by "closed," I mean they recognized the revenue
5 for that based on my ability to make those payments with them
6 having had purchased my software.

7 And what I'm saying, I went above and beyond. The last
8 deal that we did for my Discover Engine product was literally
9 to sell them my source code, which I wasn't a big fan of doing,
10 but I think they felt like at that point, that was really the
11 way they had to go to justify continued investment in that
12 product.

13 So effectively I had to give up a product that we had
14 built and that, you know, had high hopes for, but, you know, I
15 was willing to do it because we were able to clear our debt.

16 **Q.** Mr. Truitt, one more point on this email.

17 You wrote, "It was recently assigned to Andy to handle,
18 and he has effectively told me that, 'Things have changed. We
19 are not in the budget. Our hands are tied. You will not be
20 paid'."

21 What did you understand that to mean, "things have
22 changed, we are not in the budget"?

23 **A.** Andy told me that the budget was submitted in September up
24 the HP chain and that these margin payments were not in that
25 budget, and as such, there was just no way for them to

1 accommodate a payment.

2 So I'm not sure if that was true or whether that was just
3 something Kanter said, but that's what he told me and that's
4 what I'm reiterating here.

5 **MR. LEACH:** Thank you, Mr. Truitt.

6 Thank you, Your Honor. I have nothing further.

7 **THE COURT:** Okay. Ladies and gentlemen, we are going
8 to take our noon recess. Remember the admonition previously
9 given to you: Don't discuss the case, allow anyone to discuss
10 it with you, form or express any opinion.

11 We'll resume at 1:00.

12 (Luncheon recess was taken at 11:57 a.m.)

13 **Afternoon Session**

1:04 p.m.

14 (Proceedings were heard in the presence of the jury:)

15 **THE COURT:** Please be seated.

16 Let the record reflect all jurors are present, the parties
17 are present.

18 Cross-examination.

19 **MR. KEKER:** Thank you, Your Honor.

20 Good afternoon, ladies and gentlemen.

21 **CROSS-EXAMINATION**

22 **BY MR. KEKER:**

23 **Q.** And good afternoon, Mr. Truitt.

24 **A.** Good afternoon.

25 **Q.** I'm John Keker. I'm one of the lawyers representing

1 Mr. Hussain.

2 Mr. Truitt, you were subpoenaed by the Government to
3 testify before the Grand Jury in this case?

4 A. Correct.

5 Q. And you told them that you would assert your privilege
6 against self-incrimination?

7 A. Yes, sir.

8 Q. And they got an order from a judge saying that you had
9 immunity during that testimony?

10 A. Correct.

11 Q. That was back in June of 2015?

12 A. Yes, sir.

13 Q. Why did you want immunity?

14 A. I was taking the advice of my counsel.

15 Q. Did you think you needed it?

16 A. Not necessarily, no.

17 Q. Can you explain to the jury what you understand immunity
18 means? What did you get?

19 A. It means that the words that I use can't be used against
20 me or derivatives of those words.

21 Q. Okay. And right now you said you're testifying without an
22 order of immunity?

23 A. Yes, sir.

24 Q. This is now three years later?

25 A. Yes.

1 Q. And now you know it's too late for them to prosecute you
2 because of the statute of limitations; right?

3 MR. LEACH: Objection. Calls for speculation. Legal
4 conclusion.

5 THE COURT: I think -- I think --

6 BY MR. KEKER:

7 Q. Let me ask you --

8 THE COURT: No, no, no. I think it's a proper
9 question; however, you're asking about his state of mind, not
10 what the law is.

11 MR. KEKER: I'm not asking about the law. I'm asking
12 about Mr. Truitt's --

13 THE WITNESS: I don't know the specifics of the law,
14 but I would answer that saying that my thought would be that,
15 yes, it would be very late to come after me for something like
16 that.

17 BY MR. KEKER:

18 Q. Okay. So you don't feel exposed in any way to prosecution
19 by these people?

20 A. No, I do not.

21 Q. But you did back in 2015?

22 A. More so than today.

23 Q. Okay. Let's talk about some specific transactions that
24 you have testified about; and then when I finish those, I'm
25 going to go to more general things.

1 But let's go back and talk about the acquisition of your
2 company MicroLink at the end of 2009 and/or the beginning of
3 2010 when it was acquired by Autonomy. Do you have that time
4 frame in mind; end of 2009, beginning of 2010?

5 **A.** Yes, sir.

6 **Q.** The acquisition actually happened on January 4, 2010;
7 right?

8 **A.** Correct.

9 **Q.** And you were discussing it during December of 2009 and
10 maybe earlier?

11 **A.** Yes.

12 **Q.** Okay. Now, as part of that negotiation, the back and
13 forth, somebody came up with this idea of you taking an asset
14 of MicroLink out of MicroLink and starting a new company with
15 that asset; right?

16 **A.** Yes, sir.

17 **Q.** Whose idea was that?

18 **A.** My idea.

19 **Q.** Okay. And the asset that you wanted to take out was the
20 software called DiscoverPoint that you'd been developing in
21 MicroLink?

22 **A.** Correct.

23 **Q.** And you wanted to take out DiscoverPoint and start a new
24 company, Discover Technologies, with it?

25 **A.** Yes, sir.

1 Q. And in order to make DiscoverPoint the product that you
2 wanted to make it, you needed some software from Autonomy?

3 A. It could have been helpful to us, yes. We didn't need it
4 but, yes, it was -- it was helpful to have it.

5 Q. But you made a deal to buy \$10 million worth of Autonomy
6 software around that period?

7 A. Yes.

8 Q. And you've told the jury you made that deal and you paid
9 for it?

10 A. Yes.

11 Q. And the reason you had to buy it from MicroTech was that
12 Autonomy couldn't really sell it to a startup; it could only --
13 it needed to sell it to a reseller that had collectibility
14 issues, I mean, who could say, "Look, I can pay for this"?

15 A. I think that's correct, yes.

16 Q. And so they sold it to MicroTech for the end user
17 Discover Tech, and then Discover Tech bought from MicroTech?

18 A. Correct.

19 Q. All right. Now, you told us that you wanted full-blown
20 IDOL, and the prosecutor showed you the back and forth with
21 Mr. Scott. You didn't end up getting full-blown IDOL, did you?

22 A. No.

23 Q. And you were annoyed about that?

24 A. Yes.

25 Q. I think what you said was you were surprised. You pressed

1 to get more. You didn't like it. At the last moment they gave
2 you less than you were expecting.

3 **A.** Yes.

4 **Q.** And this was after Mr. Scott had said to you -- there had
5 been some back and forth between and you Mr. Cronin. Who was
6 Mr. Cronin?

7 **A.** Mr. Cronin was running our Sales Department. He was the
8 VP of sales for MicroLink.

9 **Q.** Okay. So the VP of sales had been advising you on what
10 you ought to get in this negotiation, but you couldn't get all
11 that you wanted?

12 **A.** Correct.

13 **Q.** All right. And the product that the new company was going
14 to make involved profiling, didn't it?

15 **A.** That was one aspect of what it could do.

16 **Q.** Could you explain to the jury what profiling -- what
17 DiscoverPoint Profiling was going to be about?

18 **A.** Yes. Profiling enabled us to automatically understand
19 what individual users of this SharePoint platform -- as they
20 worked, we could understand the meaning of documents that they
21 authored even to the extent of anything they read. So we would
22 take that information and we could automatically suggest it to
23 other like people within an organization.

24 So if somebody on the West Coast was working on a
25 particular issue and somebody on the East Coast is writing

1 something, you could automatically understand that there's
2 information about that.

3 Q. Did you get the profiling function that you needed from
4 Autonomy?

5 A. No.

6 Q. Never?

7 A. Not that I recall.

8 Q. Okay. On December 31st, 2009, four days before the
9 acquisition, you were still the CEO of MicroLink; right?

10 A. Yes.

11 Q. Okay. And Mr. Leach showed you Exhibit 420.

12 Could we get 420 up?

13 This is the invoice from Autonomy to MicroLink for
14 \$2.3 million worth of software. Do you remember being shown
15 that?

16 A. Yes.

17 Q. And then the next page describes what the software is, and
18 it shows (reading):

19 "This is IDOL server software for the following
20 functionality: Profiling."

21 And the price is \$2 million and then the servicing of it
22 is another \$300,000.

23 Is that something that you saw around December 31, 2009?

24 A. I do not think I did see it on December 31st, 2009.

25 Q. You've told the jury you did not agree to pay \$2.3 million

1 for profiling back at the end of 2009?

2 A. That's correct.

3 Q. Profiling was a program that had been -- you described it
4 as having been stripped away from you in this IDOL sale?

5 A. Yes.

6 Q. And you said it was very important?

7 A. Yes.

8 Q. And you said you were very unhappy not to get this program
9 in the original deal?

10 A. Correct.

11 Q. And you did not agree to buy it?

12 A. That's correct.

13 Q. When was this -- keep 420 up there, Jeff.

14 When was this prepared, if you know?

15 A. I have no idea.

16 Q. Do you know who prepared it?

17 A. I believe Alan Rizek and Mr. Cronin may have prepared it,
18 but I can't tell you for sure.

19 MR. LEACH: Objection. Foundation.

20 THE COURT: Overruled.

21 BY MR. KEKER:

22 Q. Mr. Cronin is the vice president of sales at MicroLink;
23 right?

24 A. The answer is I don't know who prepared it.

25 Q. Okay. But just let's get that straight. Cronin is the

1 vice president of sales at MicroLink; right?

2 A. Yes.

3 Q. You're the CEO, and Mr. Rizek is the chief financial
4 officer --

5 A. Correct.

6 Q. -- on this date December 31?

7 Did you tell Mr. Cronin to prepare this purchase order?

8 A. No.

9 Q. Did Mr. Cronin know how important profiling was?

10 A. Yes, I'm sure he did.

11 Q. Okay. Can we see 5569?

12 It's in your book -- that first book. There's three
13 volumes in front of you piled up.

14 THE COURT: You said in the black binder?

15 MR. KEKER: In the black binder, yes, sir. It's
16 Volume 1.

17 5569 is a memo from John Cronin to David Truitt dated
18 October 17, 2009. I'd move it in, Your Honor.

19 THE COURT: Admitted.

20 (Trial Exhibit 5569 received in evidence)

21 BY MR. KEKER:

22 Q. Okay. Do you have it, Mr. Truitt?

23 A. I'm sorry. 50 --

24 THE COURT: Look at the screen.

25 \\\

1 **BY MR. KEKER:**

2 **Q.** 5569.

3 **A.** Okay. I'm looking at it on the screen.

4 **Q.** Okay. And, basically, it shows from Cronin to you and to
5 Malcolm Hyson. Who's he?

6 **A.** He's our chief technology officer.

7 **Q.** And it's October of 2009, and in the second paragraph it
8 says (reading):

9 "The Profiling, of course, is what makes DP special,
10 and we are not adequately conveying this."

11 He's talking about trying to convey it to the marketplace;
12 right?

13 **A.** Yes.

14 **Q.** And around the same time -- well, let me show you another
15 exhibit. 5575.

16 **THE COURT:** Admitted.

17 (Trial Exhibit 5575 received in evidence)

18 **BY MR. KEKER:**

19 **Q.** 5575 is a memorandum from the Word Center to David Truitt.
20 It's a scan of a Xerox Word Center and attached to it -- could
21 we see the next page? -- is something called "Recommendation
22 Rebuild v. Buy for DiscoverPoint Concept-Based Profiling" and
23 it's dated December 12th, 2009. Do you see that?

24 **A.** Yes.

25 **Q.** Did you see that at or about the time that appears on it,

1 December 12th, 2009?

2 **A.** I imagine I did.

3 **Q.** Okay. And let's just go through it a little bit.

4 The second sentence he's talking about (reading):

5 "This Profiling enables DP to proactively deliver
6 information."

7 The next sentence talks about profiling all users. The
8 next sentence talks about automated profiling. The next
9 paragraph criticizes manual profiling in the third sentence.

10 So this is all about why you're spending a lot of money to
11 get profiling; right?

12 **A.** We're spending a lot of money to get a lot of capability
13 and profiling was certainly important.

14 **Q.** Look at the last paragraph on the first page (reading):

15 "The build-versus-buy question is both an economic
16 one and a practical one. Autonomy, for example, has
17 invested (estimated) in excess of 100 million in R&D over
18 the past 10 years on the underlying Bayesian-based
19 algorithms and its intelligent profiling engine of the
20 IDOL server product set."

21 Do you know what that means?

22 **A.** It means that Autonomy was spending a lot of money in R&D
23 on their product.

24 **Q.** The next, on the back page it says (reading):

25 "There's no reason to believe that Discover

1 Technologies or any other company could recreate this
2 Autonomy capability for substantially lower cost."
3 Right?

4 **A.** Yes, I see that.

5 **Q.** And then the last paragraph is (reading):

6 "In summary, the build approach to automated
7 concept-based profiling is high risk and very high cost.
8 If an agreement with Autonomy can be reached that would
9 make the necessary technologies available on an OEM basis
10 and do so in a relatively economic price, then the buy
11 approach is not only recommended but it's quite probably
12 the only reasonable alternative available to Discover
13 Technologies."

14 What does that mean?

15 **A.** It's suggesting that we should buy the technology as
16 opposed to build it ourselves.

17 **Q.** Do you know who wrote this?

18 **A.** I'm sure Mr. Cronin wrote it.

19 **Q.** Do you know why he wrote it?

20 **A.** I don't recall why he -- why he wrote it, except perhaps
21 to validate our \$10 million investment.

22 **Q.** Did he write it for the auditors, to explain to the
23 auditors why you were spending --

24 **A.** I don't recall what auditors those would have been, but it
25 appears to me to be written for that purpose somehow. I don't

1 know who was asking for the information.

2 Q. Do you know when he wrote it?

3 A. I don't remember when he wrote it, no.

4 Q. Did -- well, let me show you 5850 -- do you know what
5 metadata?

6 A. Yes.

7 Q. What is it?

8 A. It's information surrounding a document that tells you
9 bits and pieces of information about the document.

10 Q. And does, among other things, it tells you who created the
11 document or at least whose computer it was created on and when
12 it was created?

13 A. Yes, I believe so.

14 Q. Okay. Would you look, please, sir, at 5854? That's in
15 Volume 3 and it's way at the back.

16 A. (Witness examines document.)

17 MR. LEACH: I'm sorry. What number?

18 MR. KEKER: 5854.

19 THE WITNESS: Okay.

20 MR. KEKER: And I'd move it in, Your Honor.

21 THE COURT: Any objection?

22 MR. KEKER: It's the metadata for 420.

23 MR. LEACH: No objection, Your Honor.

24 THE COURT: Admitted.

25 (Trial Exhibit 5854 received in evidence)

1 **MR. KEKER:** All right. Can we put up the first page?

2 **Q.** This is the -- this is a copy of Exhibit 420. It's the
3 \$2.3 million purchase order from MicroLink to Autonomy, the one
4 that you'd never seen until you were shown it by Mr. Leach;
5 right?

6 **A.** Mr. Rizek, yes.

7 **MR. LEACH:** Objection, Your Honor. Misstates the
8 testimony.

9 **BY MR. KEKER:**

10 **Q.** Okay. Well, when did you first see this?

11 **A.** I testified that I saw it with Mr. Rizek preparing for a
12 meeting with Mr. Leach.

13 **Q.** Okay. Look at the next page, which is the metadata. And
14 the custodian is John Cronin and down at the bottom is the date
15 that it's created. Date created is January 2, 2010. Do you
16 see that?

17 **A.** Yeah.

18 **Q.** So Mr. Cronin created this purchase order in early
19 January 2010, but you didn't know about it?

20 **MR. LEACH:** Objection. Foundation.

21 **THE COURT:** I'm sorry. What?

22 **MR. LEACH:** Foundation, Your Honor.

23 **THE COURT:** Well, no. I think he's asking him was he
24 aware of it. It may assume a fact not in evidence, but the
25 question is: Were you aware that this document was apparently

1 created on or about January 2nd?

2 **THE WITNESS:** No, I do not believe I was aware of it.

3 **THE COURT:** Okay.

4 **BY MR. KEKER:**

5 **Q.** Okay. Would you look at 5855?

6 **A.** (Witness examines document.)

7 **MR. KEKER:** And I'd move that in. That's the metadata
8 for the Attachment A for the purchase order.

9 **THE COURT:** Admitted.

10 (Trial Exhibit 5855 received in evidence)

11 **BY MR. KEKER:**

12 **Q.** So the jury has seen this before attached to 420, but here
13 you've got the profiling software, \$2 million plus another
14 \$3 million [sic].

15 And can we see the metadata for that?

16 When was this created? First of all, the custodian was
17 Mr. Cronin and the date it was created is January 1st, 2010.
18 So this metadata says that Mr. Cronin, your vice president of
19 sales, is creating this \$2.3 million purchase order for
20 profiling software in the first days of January 2010?

21 **A.** Yes.

22 **Q.** Why would your vice president of sales be preparing this
23 purchase order without telling you about it?

24 **A.** That's a great question. I'm sure you're going to have an
25 opportunity to ask him.

1 Q. We're looking forward to it.

2 Exhibit 421, could you look at that, please? That's in
3 Volume 1 of your binder.

4 A. (Witness examines document.)

5 THE COURT: Admitted.

6 (Trial Exhibit 421 received in evidence)

7 MR. KEKER: Put that up.

8 THE WITNESS: I'm sorry. What was the number?

9 BY MR. KEKER:

10 Q. 421. We've got it on the screen.

11 A. Okay.

12 Q. Let's look at this. This is an Autonomy invoice to
13 MicroLink for the two -- can we highlight the \$2.3 million?

14 And if you go -- okay.

15 Have you ever seen this document?

16 A. Yes, I've seen it.

17 Q. When did you see it for the first time?

18 A. Can you go back up to the top, please?

19 Q. Yeah. Or you can find it -- if you want to see the whole
20 thing, it's 421 in your book.

21 A. (Witness examines document.) I'm not sure -- actually,
22 I'm not sure that I did -- I've ever seen this invoice from
23 Autonomy. I was thinking this was related to the purchase
24 order.

25 Q. Okay. Well, let's just go through it.

1 Can we highlight over here?

2 The company MicroLink is -- Autonomy is billing MicroLink
3 for something that's going to go to Discover Technologies LLC
4 and the bill is for \$2.3 million; right?

5 A. Yes.

6 Q. And the software they're getting is profiling, IDOL Server
7 Profiling; right?

8 A. Yes.

9 Q. And the date of the invoice is 12/31/2009, a day before
10 Mr. Cronin has created 420; correct?

11 A. Yes.

12 Q. Now, let's go down to the bottom and see where this came
13 from. All the way to the bottom.

14 This is a -- you were subpoenaed for documents. The
15 Grand Jury subpoenaed you and said, "Give me documents relating
16 to matters that you've discussed here"; right?

17 A. Yes.

18 Q. And you turned over a lot of documents?

19 A. Yes.

20 Q. And they got stamped with "Truitt" stamps on them so that
21 you'd know what documents you'd turned over; right?

22 A. Yes.

23 Q. And this is a document that you turned over, you had in
24 your files, and you gave the Government; right? It says
25 "Confidential treatment requested by Dave Truitt." It's got a

1 "Truitt" and a Bates stamp number.

2 **A.** Yes.

3 **Q.** So -- okay.

4 So you didn't see the purchase order, but you had in your
5 files the invoice from Autonomy to MicroLink; correct?

6 **A.** Apparently.

7 **Q.** And you didn't know that MicroLink had bought \$2.3 million
8 worth of profiling software from Autonomy?

9 **A.** No.

10 **Q.** Where did you get this invoice?

11 **A.** I'm not sure where it came from. I don't know.

12 **Q.** But according to the invoice at least, the effect of this
13 is that days before this acquisition is going to close,
14 MicroLink bought profiling software for \$2.3 million and owes
15 Autonomy \$2.3 million for that software; right?

16 **MR. LEACH:** Objection. Foundation. Confusing.

17 **MR. KEKER:** It is confusing, I'll agree with that.

18 **THE COURT:** Yeah, but you're asking him for his
19 interpretation of this document?

20 **MR. KEKER:** Yes, sir.

21 **THE COURT:** Okay. You may proceed.

22 **THE WITNESS:** This document certainly does say that
23 MicroLink -- not Discover but MicroLink owes Autonomy
24 \$2.3 million.

25 \\\

1 **BY MR. KEKER:**

2 **Q.** Okay. And this is two or three days before MicroLink
3 becomes part of Autonomy?

4 **A.** Yes.

5 **Q.** It's when you're still the president, Mr. Cronin is still
6 the vice president of sales, and Mr. Rizek is the CFO?

7 **A.** Correct.

8 **Q.** And somebody has created a debt from MicroLink -- excuse
9 me, from -- yeah, from MicroLink to Autonomy of \$2.3 million
10 and moved profiling software to MicroLink; right?

11 **A.** Yes.

12 **Q.** Okay. And let me ask you about after the acquisition
13 because you told us that Sushovan Hussain was your boss.

14 **A.** I would say that's correct, yeah.

15 **Q.** Okay. After the acquisition, was there any impediment in
16 people in London at Autonomy dealing with the people that were
17 running the MicroLink division of Autonomy?

18 **A.** Yes, there was.

19 **Q.** Tell the jury about the way that worked.

20 **A.** Because Autonomy was a foreign company and we had a top
21 secret facility clearance, our Government forces some kind of
22 a -- it's like a firewall between executives. So we had to
23 get -- we generally had to get permission to have
24 conversations. So we would have to go to our security officer
25 and say, "I need to speak about this."

1 The issues are just around making sure that none of our
2 top secret work leaves the U.S. for foreign-owned companies.

3 Q. MicroLink was doing work for, for example, we saw the name
4 Langley was one of the clients? Langley is the CI -- the
5 Central Intelligence Agency --

6 A. Yes, sir.

7 Q. -- referred to as Langley?

8 You were doing work for the National Reconnaissance
9 Office? You were doing work for the National Security Agency?

10 A. Yes.

11 Q. What other intelligence agency? Were you doing work for
12 Homeland Security?

13 A. We did work for Homeland Security. We did work for DIA, a
14 number of intell. We did work for the NGO, National Geospatial
15 Organization. So there was a lot of -- we did work for the
16 Army. We had a lot of DOD and intell-type work.

17 Q. All right. A lot of intelligence work and a lot of top
18 secret security-cleared engineers at MicroLink, and there were
19 a lot of -- the firewall was to make sure that there wasn't
20 free communication with a foreign owner; right?

21 A. Yes, that's right.

22 Q. That was part of what had to be negotiated when the
23 acquisition was going to happen?

24 A. Correct.

25 Q. Okay. So, then, after MicroLink was acquired,

1 communication between Autonomy and its subsidiary MicroLink was
2 limited, wasn't it?

3 **A.** It was. It took probably six months or so, I think, for
4 that to get implemented. We had to -- you know, it wasn't just
5 day one kind of thing but, yes, eventually that was put in
6 place.

7 **Q.** Did you know that the chief financial officer Alan Rizek
8 refused to let the auditors -- Autonomy's auditors Deloitte
9 look at MicroLink's books?

10 **MR. LEACH:** Objection. Vague as to Deloitte. Which
11 part of the firm?

12 **MR. KEKER:** The auditors. The auditors asked to look
13 at the --

14 **Q.** Did you know that the auditors asked to look at the books
15 and Rizek said, "No, you can't look at our books because we're
16 cleared"?

17 **MR. LEACH:** In the U.S. or U.K., Your Honor?

18 **THE COURT:** He's asking does he know that.

19 **THE WITNESS:** I don't recall that at all.

20 **BY MR. KEKER:**

21 **Q.** I'm sorry. Look at 5869, please.

22 **A.** (Witness examines document.)

23 **Q.** And Mr. Rizek will be with us.

24 **A.** And this -- I'm sorry. What's the timing of that? Is
25 that -- are you talking about before the acquisition? Are you

1 talking about at some point afterwards?

2 **Q.** I'm talking about April 14, 2010, when auditors asked
3 Rizek to look at some books and he told them that they
4 couldn't.

5 Look at 5869.

6 **A.** (Witness examines document.)

7 **THE COURT:** And what is that, Mr. Keker?

8 **MR. KEKER:** This is a memo from Alan Rizek to Laura
9 Blake.

10 **THE WITNESS:** I'm sorry. Which volume?

11 **MR. KEKER:** It's in Volume 3.

12 **THE COURT:** Well, we may be able to put it on -- if I
13 know where it comes from, I may be able to admit it and then
14 put it on the --

15 **MR. KEKER:** I would move it in, Your Honor. It's from
16 Rizek, who will be a witness, to Ms. Blake, and Ms. Blake is
17 the Deloitte person making a Deloitte audit request to
18 Mr. Rizek.

19 **THE COURT:** Admitted.

20 (Trial Exhibit 5869 received in evidence)

21 **MR. KEKER:** Can we put it up so we can show the jury?

22 **Q.** Down at the bottom in April 2010, this is four -- three
23 months after the acquisition, Ms. Blake is saying (reading):

24 "Hi, Alan.

25 "I am part of the U.K. Deloitte audit team. As part

1 of our quarterly audit procedures, we do a review of each
2 entity's P&L and balance sheet."

3 And goes on and asks some questions about MicroLink.

4 And then if you go up to the top, Mr. Rizek responds to
5 her (reading):

6 "Laura,

7 "I am sorry, but U.S. Government security
8 requirements placed upon us forbid your auditing of our
9 books and records."

10 Do you see that?

11 **A.** Yes.

12 **Q.** Okay. Did you know that that was the situation, you had
13 this walled-off company and the auditors couldn't come in and
14 look at what was there?

15 **A.** I didn't specifically remember this, but it doesn't
16 surprise me.

17 **Q.** Okay. Do you know what happened -- so now we've got
18 MicroLink with a \$2.3 million debt to Autonomy. Do you know
19 what happened to that debt after the acquisition?

20 **A.** I can't be sure what happened. I don't see the accounting
21 on the Autonomy side.

22 **Q.** Well, let's start with --

23 **A.** I can tell you that Discover never purchased it, if that's
24 what you're asking.

25 **Q.** You can tell me Discover never bought this profiling

1 function from MicroLink?

2 A. Correct.

3 Q. You're sure about that?

4 A. Yes, I'm sure. Are you asking whether I paid \$2.3 million
5 for profiling?

6 Q. I'm asking you whether or not Discover ever purchased from
7 MicroLink the profiling function that MicroLink had bought from
8 Autonomy for \$2.3 million?

9 A. Not to my knowledge or recollection. So I can -- again, I
10 can tell you maybe if they sold it to us for \$10 or something
11 like that, perhaps, but I didn't pay \$2.3 million for the
12 software.

13 Q. So what you remember is that maybe MicroLink sold the
14 software to Discover Tech for a much lower price than the 2.3?
15 They bought something for 2.3 and then after the acquisition
16 sold it to your company outside for much less money; is that
17 right?

18 A. I don't remember that, sir. I don't remember this
19 transaction.

20 Q. That would be ripping off Autonomy, wouldn't it? You're
21 now -- MicroLink -- if MicroLink once it's part of Autonomy
22 takes a debt that it has, \$2.3 million, and writes it off but
23 then goes ahead and sells to Discover Tech some technology for
24 a lesser amount, that's ripping off Autonomy, isn't it?

25 MR. LEACH: Objection. Argumentative. He said he

1 doesn't know.

2 **THE COURT:** Sustained.

3 **THE WITNESS:** Ripping off Autonomy... I don't know how
4 to answer that question.

5 **MR. LEACH:** Excuse me, Your Honor.

6 **BY MR. KEKER:**

7 **Q.** All right. Look at --

8 **THE COURT:** Actually, if I sustain the objection, you
9 don't have to answer the question.

10 **THE WITNESS:** Okay.

11 **BY MR. KEKER:**

12 **Q.** Look at 535, please, sir.

13 **THE COURT:** What number?

14 **MR. KEKER:** 535. It's in Volume 1.

15 **THE COURT:** 535. Okay. Let me look at it.

16 (Pause in proceedings.)

17 **THE COURT:** Admitted.

18 (Trial Exhibit 535 received in evidence)

19 **MR. KEKER:** Put it up.

20 **Q.** Is this Mr. Rizek confirming -- look over at page -- let's
21 go over to page 4 of the exhibit -- your chief financial
22 officer -- go down and show his signature, please, Jeff.

23 Is that Mr. Rizek's signature?

24 **A.** Yes, it is.

25 **Q.** And on January 11, which is a few days after Autonomy has

1 bought MicroLink, the MicroLink subsidiary signed off by Alan
2 Rizek is confirming that (reading):

3 "The items listed above were properly charged to our
4 account and were unpaid as of January 11, 2010, and there
5 are no side letters or other agreements in respect of the
6 subject matter of this request, except as noted below."

7 And then it's blank.

8 And what they're talking about is a debt of \$2.3 million
9 that was invoiced on December 31, '09. So he's affirming the
10 debt?

11 **A.** Yes, Mr. Rizek is affirming the debt.

12 **Q.** Why would Mr. -- why would your chief financial officer of
13 your company Discover Tech -- excuse me -- of MicroLink, of
14 which you were now the president, why would he affirm this
15 \$2.3 million debt if you didn't even know about it?

16 **A.** Well, first of all, he affirmed all of these letters; and,
17 second of all, I think he's the one who was responsible for
18 putting this together. Mr. Cronin obviously helped him with
19 the PO and Mr. Rizek put it on our books and he is affirming
20 it.

21 **Q.** And did Mr. Rizek also tell Autonomy that Discover Tech
22 would never buy this software and, therefore, they had to write
23 this debt off the books?

24 **A.** You're asking me whether I know what Mr. Rizek told --

25 **Q.** I want to know whether or not he told Autonomy that

1 Discover Tech would never pay anything for this and, therefore,
2 it will never close and so write it off your books as bad debt?

3 A. I have no idea.

4 Q. Look at 5561, please, sir.

5 A. (Witness examines document.)

6 Q. 5561, the middle e-mail is from Mr. Rizek to Cynthia
7 Watkins. Do you know who she is?

8 A. I know she worked in accounting at Autonomy.

9 Q. All right. And it's dated May 13, 2010.

10 A. I'm sorry. What number?

11 Q. 55 --

12 THE COURT: Admitted.

13 (Trial Exhibit 5561 received in evidence)

14 BY MR. KEKER:

15 Q. 5561.

16 A. What volume?

17 Q. Put it up.

18 A. Okay.

19 Q. Let's go up to the top e-mail first. Cynthia Watkins of
20 Autonomy is reporting to another -- do you know who Laura Dann
21 is at Autonomy?

22 A. No.

23 Q. She says (reading):

24 "I just had another discussion with Alan. He
25 confirmed that none of the below deals except for

1 Ameriprise, which may come through INC, are expected to
2 close."

3 And then drop down to what deals he's talking about.

4 And one of the deals is a deal with Discover, where the
5 end user was supposed to be Discover, \$2.3 million, and he's
6 saying this will never close.

7 **A.** Okay.

8 **Q.** And then after that it was written off; right?

9 **MR. LEACH:** Your Honor, I object on foundation. Does
10 this witness know anything about this?

11 **THE COURT:** I don't -- apparently not.

12 **MR. KEKER:** Well, then let's look at something more.

13 **THE COURT:** I mean, I think this will come in with
14 Mr. Rizek; right?

15 **MR. KEKER:** It will, but --

16 **THE COURT:** But let's -- but in the interest of time,
17 maybe we shouldn't spend a lot of time asking him about things
18 of which he has no knowledge.

19 **BY MR. KEKER:**

20 **Q.** Well, Mr. Truitt, you know that after MicroLink was
21 purchased by Autonomy, you and Mr. Rizek and Mr. Cronin sold
22 the profiling software out to Discover Tech so that your new
23 company would have it; right?

24 **A.** I do not know that. I do not recall that.

25 **Q.** Look at 5583, please, sir.

1 A. (Witness examines document.)

2 THE COURT: 55 what?

3 MR. KEKER: '83. 5583. This is a --

4 THE COURT: Okay. Admitted.

5 (Trial Exhibit 5583 received in evidence)

6 MR. KEKER: All right. Can we put this up?

7 Q. What we have here is an e-mail on January 6, 2010, two
8 days after the acquisition, and it's enclosing a Discover Tech
9 PO and it's from John Cronin to Dave Truitt.

10 Is that an e-mail that Mr. Cronin sent you?

11 A. I'm assuming so.

12 Q. Let's look at the next page.

13 The next page is a purchase order from Discover Tech to
14 MicroLink.

15 And let's go over -- and so the next page that's attached
16 to that is a SPIFF.

17 And now let's look at 5587, which is a memo from Cronin.

18 THE COURT: Admitted.

19 (Trial Exhibit 5587 received in evidence)

20 MR. KEKER: -- Cronin to Truitt that I would move in.

21 THE COURT: Admitted.

22 BY MR. KEKER:

23 Q. And so the same purchase order, 2010, from Cronin to
24 Truitt, but the bottom one says, as the one before it, John
25 Cronin to Dave Truitt (reading):

1 "For your review. Dave, take a look.

2 "John."

3 And then you say (reading):

4 "Was there an attachment?"

5 And he says (reading):

6 "Yes. Here it is."

7 And now let's go over and look at the attachment.

8 And this is a January 7, 2010, attachment to a purchase
9 order in which the resell -- the person getting it is Discover
10 Technologies. They're getting profiling software -- this is
11 from MicroLink -- and they're getting it for \$1,000 per
12 customer; right?

13 A. (Witness examines document.) Okay.

14 Q. Have you ever seen that before?

15 A. I don't recall it.

16 Q. This is MicroLink, now part of Autonomy, selling for
17 \$1,000 per customer the profiling software that you needed so
18 badly and that you were so mad about not getting; right?

19 A. That's what it appears to be. I'm not even sure what
20 \$1,000 per customer means. I don't recall this order.

21 Q. Let's look at 5669.

22 A. (Witness examines document.)

23 Q. Excuse me. 5669?

24 THE COURT: 56?

25 MR. KEKER: 5669.

1 **THE COURT:** 5669. Admitted.

2 (Trial Exhibit 5669 received in evidence)

3 **THE WITNESS:** What volume?

4 **MR. KEKER:** Volume 3.

5 **THE COURT:** It will pop up. It will be faster.

6 Okay. I mean, obviously if you want to look at the
7 document itself, feel free to.

8 **THE WITNESS:** I don't need to look at the document.

9 If you guys are going to put them up every time, that's great.

10 **THE COURT:** I think they probably are most of the
11 time.

12 **BY MR. KEKER:**

13 **Q.** All right. Now, this -- so before we looked at January 6.
14 Now, on January 7 Cronin is sending something to Rizek. VP
15 sales sending something to CFO; right?

16 **A.** Yes.

17 **Q.** And he says (reading):

18 "Alan, does this look okay to you?"

19 And let's see what's attached.

20 It's that purchase order; right? Let's blow it up. The
21 purchase order that we just looked at where Discover
22 Technologies is getting from MicroLink for a thousand dollars.

23 What's the next page? The profiling software. Do you see
24 that?

25 **A.** Yeah.

1 Q. And you didn't know anything about this?

2 A. As I have said, I don't remember dealing with this at all,
3 so it -- you know, it was eight years ago and, you know,
4 clearly I'm not on this one but I was on the last one. So, you
5 know, I must have had some recollection -- or some involvement.
6 I don't remember it.

7 Q. Would you look at 5584 in terms of your involvement? This
8 is an e-mail from John Cronin to Dave Truitt.

9 MR. KEKER: Move it in, Your Honor.

10 THE COURT: Well, does this go to the witness?

11 MR. KEKER: Yeah. It's from Cronin to Truitt.

12 THE COURT: Oh, sorry. Admitted.

13 (Trial Exhibit 5584 received in evidence)

14 BY MR. KEKER:

15 Q. So later on in the month, Cronin is sending to you
16 something that says "Autonomy Profiling SW." Is that Autonomy
17 profiling software?

18 A. It looks that way, yes.

19 Q. (reading)

20 "I've asked for the Autometer account to be set up
21 for mhyson@discovertechnologies.com."

22 Do you see that?

23 A. Yes.

24 Q. What does that mean?

25 A. It means we would have access to the software.

1 Q. Okay. This is delivery of the software to Discover Tech?
2 That you're getting the profiling software; right?

3 A. Yes.

4 Q. Okay. And did you know that this -- I mean, first of all,
5 let's just go back for a second.

6 Profiling software was very important, you were very
7 unhappy, and now you're getting the profiling software, but
8 this is something you completely forgot about?

9 A. Yes, sir. And if I could, you know, clearly this is
10 embarrassing to me that I don't recall this at all; but in
11 March of 2010, our software was based on Microsoft technology.
12 Microsoft introduced new search called FAST in March of 2010.
13 We were able to leverage that technology, and we -- and we did
14 leverage that technology; and in terms of how important this
15 was or was not to us, it became way less important to us at
16 that time, and maybe that's why I don't recall it.

17 I don't recall this order and I don't recall, you know,
18 utilizing it, and that's all -- you know, I'm sorry, that's all
19 I can say. I don't recall it.

20 Q. Is it important for you to tell this jury the truth?

21 A. Yes.

22 Q. Okay. And you told them unequivocally without blinking,
23 without any hesitation that you -- yesterday and again today
24 that you knew nothing about this \$2.3 million purchase of
25 profiling software by MicroLink from Autonomy which then once

1 you're running MicroLink gets written off the books and sold to
2 Discover for 1,000. You completely forgot about that; right?

3 **A.** Yes. I'm being as honest as I can possibly be.

4 **Q.** Okay. But this is the delivery. This is Autonomy -- this
5 is your new company Discover Tech getting exactly what it
6 needs, the profiling software; right?

7 **A.** Yes, that's the way it appears.

8 **Q.** Let's look at this another way. You said your phone
9 number is 713-915-1829; right?

10 **A.** 703, yes.

11 **Q.** 703. I beg your pardon. 703.

12 And your phone records were produced to the Government as
13 part of their subpoena power; right?

14 **A.** Yes.

15 **Q.** Look at 5588. Those are your phone records, which I think
16 are already -- are they in evidence? Maybe not.

17 These are your phone records for the early part of 2010,
18 the period we're talking about; right?

19 **A.** I don't have it on the screen.

20 **MR. LEACH:** No objection, Your Honor.

21 **MR. KEKER:** All right. Let's put them up on the
22 screen. The first page -- let's go to the first page.

23 **THE CLERK:** One moment.

24 Is it admitted? Judge, is this admitted?

25 **THE COURT:** Sorry. I'm doing -- pardon me.

1 **THE CLERK:** That's okay.

2 **THE COURT:** What's up?

3 **THE CLERK:** 5588, is it admitted?

4 **THE COURT:** No objection?

5 **MR. LEACH:** No objection.

6 **THE COURT:** It's in.

7 (Trial Exhibit 5588 received in evidence)

8 **THE CLERK:** Thank you.

9 **MR. KEKER:** The third page. One more, Jeff. No, not
10 that one. I'm sorry. The one that's marked 5.

11 **Q.** Okay. Mr. Truitt, why don't you get out your phone
12 records and look at them if you need to. Are these your phone
13 records that you sent in?

14 **A.** Yes.

15 **Q.** Okay.

16 **MR. KEKER:** And, Your Honor, we have a demonstrative
17 that picks out of these phone records some calls that were --
18 that they show were made on January 1st, and I would like to
19 use that demonstrative. It's 5741.

20 **THE COURT:** Okay. So 5741 is admitted for
21 demonstrative purposes only.

22 (Trial Exhibit 5741 Demonstrative Purposes Only
23 received in evidence)

24 **THE COURT:** 50 -- what number is it?

25 **MR. KEKER:** 5741.

1 **THE COURT:** 5741.

2 **BY MR. KEKER:**

3 **Q.** Okay. So, look, this is January 1st, 2010, the same
4 day --

5 **THE COURT:** Ladies and gentlemen, let me just tell you
6 what a demonstrative is.

7 **MR. KEKER:** Yeah.

8 **THE COURT:** My understanding of a demonstrative is
9 it's actually not evidence. What it is, it's a collection of
10 certain items that the party believes are in evidence to
11 demonstrate a particular point. So it's not like the original
12 document, and it is to be considered by you only insofar as you
13 believe that the underlying information that's contained on the
14 demonstrative is true and correct.

15 Okay.

16 **MR. LEACH:** Your Honor, I'm not sure this
17 demonstrative is based just on the exhibit that's been
18 admitted. I see some --

19 **THE COURT:** Well, what is it?

20 **MR. LEACH:** I see some calls between Mr. Rizek and
21 Hussain.

22 **THE COURT:** Okay. So it's coming in provisionally
23 subject to a motion to strike, and I'm charging the parties
24 with the responsibility of monitoring it; but if, in fact,
25 there isn't underlying evidence admitted on those calls or

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1 those contacts, then, of course, it's stricken.

2 **MR. KEKER:** Mr. Rizek --

3 **THE COURT:** Is there any problem with that procedure?
4 I mean, I'm just trying to figure out --

5 **MR. LEACH:** No, Your Honor. That's all right.

6 **MR. KEKER:** We have Mr. Rizek's phone records, too, so
7 between Mr. Rizek and this --

8 **THE COURT:** So I don't think it's changed anything
9 I've said --

10 **MR. KEKER:** No.

11 **THE COURT:** -- which, in other words, a demonstrative
12 can be used. You have to start somewhere in this process.
13 This is the witness who is here.

14 Yes, Mr. Leach?

15 **MR. LEACH:** May we approach, Your Honor, on this?

16 **THE COURT:** Sure.

17 Okay. Ladies and gentlemen, in order to focus my
18 attention on the case, you are invited to have a conversation
19 and I will have my own conversation at sidebar.

20 **(The following proceedings were heard at the sidebar:)**

21 **THE COURT:** See this is what Judge Legge did. What he
22 did is when he tried a case, he would come out, in criminal
23 cases, he would come out with piles of his law and motion and
24 his other motions, as I did today, and try to get through them
25 thinking that everything will go just swimmingly between the

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1 parties, sort of establish the way things are happening.

2 Anyway, what's the problem?

3 **MR. KEKER:** This demonstrative is based on two sets of
4 phone records: One is 5588 that we just identified that are
5 Truitt's phone records, and then there are going to be records
6 from Rizek, which we will introduce through Mr. Rizek.

7 **MR. FRENTZEN:** Well, if I can just --

8 **THE COURT:** Yes, go ahead.

9 **MR. FRENTZEN:** -- since Mr. Rizek is my witness.

10 The problem is this is a demonstrative that we just got
11 and was never shown to us before. I'm going to have to go back
12 and compare. I have no idea if the non-Truitt calls are
13 accurate or not and/or if there are other calls; but, in any
14 event, this witness is not going to have a foundation for the
15 calls --

16 **MR. KEKER:** I think he is.

17 **MR. FRENTZEN:** -- between Rizek and Hussain.

18 **THE COURT:** And the answer is he may or may not. I
19 don't know, but I've got to start somewhere. I have to always
20 believe that the attorneys are offering it in good faith
21 because they believe the evidence will ultimately support a
22 reasonable inference.

23 If it turns out that those calls aren't admitted -- you
24 know, there isn't independent evidence of it, then I'll strike
25 the -- I'll ask the defendants to withdraw the exhibit and put

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1 in a new exhibit.

2 Nobody is going to remember -- they may or may not
3 remember, but I don't think in closing anybody's going to argue
4 that and it's not going to be there if it's not supported.

5 I think we have to give some leeway in a two-month case
6 where it comes in piece by piece by piece. If you believe,
7 Mr. Frentzen, that there is no evidence to support the
8 occurrence of these calls, that's a little different from you
9 have to review it.

10 **MR. FRENTZEN:** I know at least some of these calls
11 took place. I think the bigger issue is questioning this
12 witness about Alan Rizek's phone records.

13 **THE COURT:** Well, he's not going to say -- he's going
14 to say he doesn't know.

15 **MR. KEKER:** But he's going to say he knows what
16 Rizek's doing I think. I mean, that's the whole point of this.

17 **THE COURT:** I don't know.

18 **MR. FRENTZEN:** Well, that's contrary to what he's so
19 far said --

20 **THE COURT:** Okay.

21 **MR. FRENTZEN:** -- and so --

22 **MR. REEVES:** I have one last piece. I think we'll
23 have other demonstratives. I'd just like a clear record about
24 the exact exhibits that support the demonstrative. That's all
25 we ask for.

1 **THE COURT:** We're not going to go through it right
2 now.

3 **MR. REEVES:** No.

4 **THE COURT:** I'm not going to deal with it now. Oh,
5 this whole group, nobody appreciates that literary reference,
6 Biblical reference. Nevertheless, okay, my ruling stands.

7 **MR. FRENTZEN:** I understand.

8 **THE COURT:** It is the way it's going to work and
9 that's it; and believe me, if it turns out to be different,
10 we'll address it.

11 **MR. FRENTZEN:** Great. Thank you.

12 **MR. LEACH:** Thank you, Your Honor.

13 **(The following proceedings were heard in open court:)**

14 **THE COURT:** Thank you very much. You may proceed.

15 **BY MR. KEKER:**

16 **Q.** If we could put up 5741, which is a demonstrative that's
17 based on your phone records and then a couple of the calls are
18 based on Mr. Rizek's phone records, but let's start and get
19 oriented.

20 This is January 1st, 2010, the day before the \$10 million
21 deal, which did not get you profiling software and left you
22 unhappy, had closed; right?

23 **A.** Yes.

24 **Q.** And so you were unhappy on January 1st because you got
25 IDOL Lite and you didn't have the profiling function?

1 A. Yes.

2 Q. So at 3:52 p.m. you called Mr. Egan. What did you talk to
3 Mr. Egan about?

4 A. I have no idea.

5 Q. Did you talk to him about your frustration and being angry
6 about not having the profiling software?

7 A. I was probably asking when is our deal going to close
8 because we were at that point supposed to settle a \$55 million
9 deal the day before.

10 Q. Did you talk to Mr. Egan about your inability to get the
11 profiling software and your anger about that?

12 A. I don't believe so. I certainly don't recall it if I did.

13 Q. Okay. Then the next call, not -- I mean, a call at
14 4:06 p.m. after talking to Mr. Egan for 14 minutes, you talked
15 to -- actually, you got off the phone with Mr. Egan, 14 minutes
16 would put you at 4:06, and you immediately called Mr. Cronin
17 and talked to him for 8 minutes.

18 A. These are eight years ago, sir. I don't know any specific
19 conversation that I had that day.

20 Q. Is that when you told him to prepare this phony purchase
21 order?

22 A. I don't recall the order. I don't recall saying anything
23 like that to Mr. Cronin.

24 Q. Did you and Mr. Egan and Mr. Cronin agree that "What we'll
25 do is pretend like we bought the profiling software in the last

1 quarter, this 2.3 million deal had been made in the last
2 quarter between MicroLink and Autonomy"? Is that what you all
3 agreed to?

4 **A.** Why would that benefit me to backdate an order?

5 **Q.** You're asking --

6 **A.** In any scenario, why would I agree to put it back in the
7 prior quarter?

8 **Q.** Because you --

9 **THE COURT:** No. Wait. Wait. Wait. Wait.

10 Okay. You actually can't ask --

11 **THE WITNESS:** Okay.

12 **THE COURT:** -- questions.

13 **THE WITNESS:** Sorry.

14 **THE COURT:** However, if you don't understand a
15 question, you certainly can ask that -- you don't have to
16 answer it. You can say, "Can you clarify it," or, "What do you
17 mean by it," or something of that nature; but it's all a
18 question of argument that will be addressed at some point as to
19 what the meaning of the testimony is. Do you understand?

20 And as well counsel for the Government after Mr. Keker is
21 concluded will be able to ask you further questions.

22 **THE WITNESS:** Okay.

23 **THE COURT:** Okay?

24 **THE WITNESS:** Then I would answer it this way: Given
25 the fact I don't remember the conversation, I don't know what

1 was said. However, I find it highly unlikely that I would have
2 been discussing backdating an order because it would not have
3 benefited me to do so.

4 **BY MR. KEKER:**

5 **Q.** Would it have benefited Mr. Egan?

6 **A.** I have no idea.

7 **Q.** Was Mr. Egan trying to hit some sales numbers, make
8 quotas, that kind of thing?

9 **A.** If he -- if he did, I have no idea about Mr. Egan's
10 compensation. Whether he was paid on commission or a salary, I
11 don't know.

12 **Q.** Was it Mr. Egan's idea to say that this \$2.3 million deal
13 had settled in the last quarter?

14 **A.** You'll have to ask Mr. Egan that question.

15 **Q.** We will.

16 Why did Mr. Cronin prepare this purchase order on
17 January 1st?

18 **A.** You would have to ask Mr. Cronin that question.

19 **Q.** You didn't have anything to do with it?

20 **A.** I don't recall it. I can't answer a question around a
21 subject that I don't remember.

22 **Q.** Then you called Mr. Rizek --

23 **A.** Perhaps if I had some documents around this, prior to
24 this, maybe I could have gone back and tried to figure it out.
25 I haven't seen it. I don't remember it.

1 Q. Then -- well, you talked to Mr. Egan, you talked to
2 Mr. Cronin, and then you call your CFO, Mr. Rizek, for
3 1 minute. That's probably a call that didn't go through. But
4 then you get him at 4:18 and talk to him for 11 minutes. What
5 did you talk about?

6 A. I have no idea.

7 Q. And then you talked to Mr. Egan again. What did you talk
8 to him about?

9 A. I have no idea.

10 Q. At this point had you put together this scheme of
11 \$2.3 million to get the profiling software knowing that you
12 could put it into this fenced-off MicroLink and write it off
13 later?

14 MR. LEACH: Objection. Asked and answered.
15 Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I never would have done that.

18 BY MR. KEKER:

19 Q. Then you talked to Mr. Cronin for 8 minutes and then
20 Mr. Rizek for 8 minutes, and then Mr. Rizek called Mr. Hussain.
21 Do you see that?

22 A. Yes.

23 Q. What did you talk to Mr. Cronin and Mr. Rizek about?

24 A. I have no idea.

25 Q. Did Mr. Rizek tell Mr. Hussain that, "Oh, by the way, we

1 had another \$2.3 million deal that closed in the last quarter"?

2 **MR. LEACH:** Objection. Foundation.

3 **THE COURT:** Sustained.

4 **THE WITNESS:** I have no idea what --

5 **THE COURT:** I understand that, and that's why I
6 sustained the objection; but if I do sustain the objection, you
7 don't answer the question. Okay?

8 **THE WITNESS:** Okay.

9 **THE COURT:** Thank you.

10 **BY MR. KEKER:**

11 **Q.** And then after Mr. Rizek talked to Mr. Hussain, he called
12 you?

13 **A.** Yes. We were, again, trying to close -- we were trying to
14 sell our company that day. We had lots to talk about. We were
15 probably asking questions of Mr. Hussain, "Why didn't our deal
16 close yesterday? When will it close? What information do you
17 need from us?" That's what I was focused on.

18 **Q.** And then at some point you talked -- further down you
19 talked to Mr. Rizek for 64 minutes. What was that about? You
20 had more than an hour phone conversation with him.

21 **A.** Maybe "What did Mr. Hussain tell you about when our deal
22 is going to close?" I don't know. I don't remember. These
23 calls were -- were eight years ago.

24 **Q.** You thought about this \$2.3 million deal again in late
25 2010 when you were dealing with Discover Tech's auditors,

1 didn't you?

2 **A.** I don't recall anything like that, but I'm not sure what
3 you're referring to.

4 **Q.** Well, this 5575, we can put that back up again?
5 That had to do with your auditors in late 2010, didn't it?

6 **A.** What auditors are you referring to?

7 **Q.** Look at -- let's look at 1293 in your first volume.

8 **THE COURT:** 1293 admitted.

9 (Trial Exhibit 1293 received in evidence)

10 **MR. KEKER:** If we can put that up.

11 **Q.** This is an e-mail from you to somebody named Cassie
12 Hartogs; right?

13 **A.** Yes.

14 **Q.** And it's dated December 16, 2009?

15 **A.** Yes.

16 **Q.** And who's Ms. Hartogs?

17 **A.** She is our Discover Technology accounting. She works for
18 BDO. She's our accountant.

19 **Q.** Okay. And was she also -- was her firm also the auditors?

20 **A.** No. We weren't even getting audits at this point.

21 **Q.** It says "MicroTech PO OEM Agreement Buy v. Build.pdf."

22 And then it says (reading):

23 "Hi, Cassie.

24 "Here is the purchase order and OEM license and
25 distribution agreement for the Autonomy software

1 transaction. I have also included a working paper that
2 sheds some lights on our thought process for the buy v.
3 build scenario last year prior to making the investment."

4 Was that you telling her that this buy-versus-build
5 scenario was written back in 2009, as the jury has seen it's
6 dated?

7 **A.** I don't know if it's saying that I said it was written
8 back in 2009, but it clearly is a -- she simply needed to
9 understand what the software did so she could account for it
10 properly. That's my recollection of this.

11 **Q.** And you sent her the buy-versus-build memo?

12 **A.** Yes.

13 **Q.** Do you know when the buy-versus-build memo was created?

14 **A.** I remember that Mr. Cronin wrote it. I don't remember
15 exactly when it was created.

16 **Q.** It's got a date on it of December 2009; right?

17 **A.** Okay.

18 **Q.** Let's look at it. It's 1292. It's a memo from John
19 Cronin to Dave Truitt attaching the buy-versus-build memo.

20 **MR. KEKER:** Move it in, Your Honor.

21 **THE COURT:** Admitted.

22 (Trial Exhibit 1292 received in evidence)

23 **BY MR. KEKER:**

24 **Q.** And it's dated December 16, 2009. And look at the next
25 page. When is the --

1 **MR. LEACH:** Objection, Your Honor. Misstates the
2 evidence.

3 **MR. KEKER:** Excuse me. 2010. You're absolutely
4 right. I beg your pardon.

5 **Q.** But the buy-versus-build memo is dated -- look at the next
6 page -- December 12, 2009. Do you know when that was written?

7 **A.** I don't know. I didn't write it, sir.

8 **Q.** Was it backdated by a year? Was it written right around
9 December 2010?

10 **A.** It could have been. I don't know. I didn't write the
11 document.

12 **Q.** Did you tell your auditors that the document, which
13 purported to describe your thinking back in 2009, was actually
14 written in 2010?

15 **A.** I don't recall telling them that, and I don't know that it
16 would have mattered.

17 **Q.** Look at 5737.

18 **A.** (Witness examines document.)

19 **THE COURT:** Admitted.

20 (Trial Exhibit 5737 received in evidence)

21 **MR. LEACH:** What was the exhibit number again?

22 **MR. KEKER:** 5737, and I'm having trouble finding it.

23 **MR. LEACH:** The judge has admitted it, so we're both
24 in trouble.

25 **MR. KEKER:** I know.

1 **MR. LEACH:** I don't have it either.

2 **THE COURT:** I can change my mind, especially if nobody
3 finds it. It will be one of the most important documents in
4 this case I'm sure.

5 Are we trying to locate it?

6 **MR. KEKER:** We are trying to locate it, Your Honor. I
7 beg your pardon.

8 **THE COURT:** Okay. It's all right.

9 (Pause in proceedings.)

10 **MR. KEKER:** We'll have to come back to it. We've got
11 confusion here.

12 **THE COURT:** Okay.

13 **BY MR. KEKER:**

14 **Q.** Did you tell your auditors about buying the profiling
15 software?

16 **A.** I don't recall talking to anyone about the profiling
17 software, including my auditors.

18 **Q.** Okay. I'm going to go back and see if I can get lucky.
19 5739.

20 Ah. 5739 is a memorandum from you -- from Mr. Cronin to
21 you dated December 15, 2010.

22 **THE COURT:** Admitted.

23 **MR. KEKER:** Move it in, Your Honor.

24 (Trial Exhibit 5739 received in evidence)

25 \\

1 BY MR. KEKER:

2 Q. Do you have that in front of you?

3 A. Yes.

4 Q. Okay. The first page is -- it's dated 2010, Discover Tech
5 OEM PO, and attached is a purchase order that says it's from
6 MicroTech to Discover Technologies, the \$10,100,000; and then
7 attached to it is a purchase order dated January 7, 2010.

8 Next page.

9 It's got that same 2010 number on it, and it says that
10 that \$10,100 [sic] got you profiling software; right?

11 A. That's what it says.

12 Q. And that's just not true, is it?

13 A. You would have to ask Mr. Cronin. He wrote this document.
14 I don't know.

15 Q. Were you trying to persuade your auditors that you had
16 gotten the -- that you legitimately had the profiling software
17 and that was part of the purchase?

18 A. They weren't our auditors, sir. These were my accountants
19 and they just wanted to correctly know how to depreciate the
20 software.

21 Q. All right. But what you're telling them is that you had
22 gotten for that \$10 million the profiling software?

23 A. I'm not telling them anything. Mr. Cronin wrote this. I
24 guess I forwarded -- I forwarded it to my accountants. This is
25 Mr. Cronin's attempt to describe what our software was so they

1 could account for it properly.

2 Q. Is this subject of the \$2.3 million sale of profiling
3 software something that you have talked to Mr. Rizek about
4 since this investigation began?

5 A. Yes.

6 Q. And have you also talked to Mr. Cronin about it?

7 A. I don't recall talking to Mr. Cronin about it.

8 Q. Have you talked to Mr. Egan about it?

9 A. I don't recall talking to Mr. Egan about it.

10 Q. You had a lawyer back in the old days when you got
11 immunity; right?

12 A. Yes.

13 Q. And how long ago -- have you had your lawyer right up to
14 now?

15 A. Yes.

16 Q. Okay. Is your lawyer talking to Cronin and Egan's lawyers
17 about what's going on?

18 A. Yes.

19 Q. They're exchanging information about what people are
20 saying and that kind of thing?

21 A. Yes.

22 Q. All right. Separate subject.

23 **THE COURT:** Well, okay, different subject.

24 Ladies and gentlemen, we're going to take our recess now.

25 Remember the admonition given to you: Don't discuss the case,

1 allow anyone to discuss it with you, form or express any
2 opinion.

3 We'll be in recess until 2:30.

4 (Proceedings were heard out of the presence of the jury:)

5 **THE COURT:** Okay. You may step down.

6 So two things. First of all, how long do you think you're
7 going to be?

8 **MR. KEKER:** Probably the rest of the afternoon,
9 Your Honor.

10 **THE COURT:** So the witness will have to come back on
11 Monday in all likelihood. Okay.

12 **MR. LEACH:** That would be very unfortunate,
13 Your Honor. Mr. Truitt was here last week.

14 **THE COURT:** Well, I know. What do you want me to do?

15 **MR. LEACH:** We would be prepared to go till 4:30. I
16 right now don't have a great deal of redirect.

17 **THE COURT:** Well, I'll go a bit longer if we can
18 conclude; but, on the other hand, he was on for an extended
19 period of time and asked a lot of things, and I'm not going to
20 deny Defense the right to cross-examine or circumscribe it.

21 I mean, I don't see any delay in the examination. It
22 appears that it's focused and proceeding, and so I'm going to
23 allow it to continue.

24 If it turns out that Mr. Keker concludes in a reasonable
25 time in terms of the day's schedule, I certainly would go for a

1 little bit extra time in order so that the witness can be
2 excused; but if that doesn't happen, the witness has to come
3 back on Monday. So that's the game plan.

4 Now, I wanted to raise the question, in light of the
5 witness' last testimony about discussions --

6 **MR. KEKER:** Do you want him to hear?

7 **THE COURT:** Well, he can hear this because I don't
8 think it ought to be out of his presence, in any event, about
9 his lawyer talking to some other lawyer for a witness about
10 what's going on.

11 I don't know -- you know, the questions were somewhat
12 vague in terms of time period, but if they were to include the
13 period of time that this case is presently being tried -- that
14 is, within the last week or so of testimony -- that is of
15 concern to the Court in light of the order. The order was that
16 witnesses be excluded, and there's -- you know, it would be --
17 in the Court's view initially, it would raise a question as to
18 whether that order was being complied with.

19 If the witness has a conversation with his or her lawyer
20 and that lawyer then has a conversation with the lawyer of
21 another witness, that's an indirect way, in the Court's view,
22 of circumventing the Court's order.

23 I don't know if any of this has happened. Okay? But I
24 don't want to blindside anybody, which means the Government in
25 this case, that there isn't concern. I think that there might

1 be.

2 However, I don't know the facts, and so I just wanted to
3 say what I'm going to say. It's up to you to determine what
4 the facts are, but I think we need some clarification in light
5 of the testimony of the witness. Okay?

6 I mean, you don't have to say anything. That's just what
7 I'm suggesting. It's up to you to do whatever you want to do.

8 I certainly am going to permit counsel to inquire. You
9 know, maybe the remedy is you simply ask the next witness "Have
10 you had a conversation with your lawyer about X, Y, or Z?" And
11 if that's the case, I don't know that it's protected by the
12 attorney-client privilege. It raises questions.

13 So, anyway, I just want to put all that out on the table.
14 I've not made up my mind about anything because, by the way, I
15 really don't know the facts. I don't know when this happened,
16 if it did happen, and so forth; but the witness has raised
17 that -- I don't know whether he's raised it -- Mr. Keker has
18 raised it and it's been discussed.

19 Anybody can answer if you want to answer.

20 **MR. LEACH:** I guess I would like clarity from the
21 Government's side about what the Court's order is in terms of
22 our obligations to instruct lawyers for witnesses about what to
23 do.

24 **THE COURT:** Oh, I think it's clear. Is it not? I
25 mean, I think the order of excluding witnesses -- now, again,

1 this may be inadvertent and it may not -- and the Government
2 may have had a different view of the scope of the Court's order
3 than the Court had, and I'll invite some discussion on that
4 point if that becomes irrelevant -- if it's relevant in the
5 time period.

6 But I'm sitting here thinking, as occasionally I do, what
7 can you do? I mean, if you have an order excluding witnesses,
8 what does it mean in terms of communicating the substance or
9 any of the points of the testimony to the witness?

10 I don't think it's like -- well, at your peril. I don't
11 think it's -- I don't think the rule is: Well, here's the rule
12 and if you break the rule, there's a remedy, which is, you
13 know, telling the jury all about it. Maybe. Maybe that's it.
14 I don't know. I've never been confronted with this situation
15 in this particular form.

16 So if you want to ask me anything, you do know I don't
17 know. I don't even -- I'm not certain that his testimony
18 related to conversations that may have taken place during the
19 course of this trial. It may not be. It may be earlier.

20 **MR. FRENTZEN:** And if I can just clarify, Your Honor.

21 **THE COURT:** Yes.

22 **MR. FRENTZEN:** First of all, I have -- I think --
23 well, I don't know, but I think -- certainly I speak on behalf
24 of myself -- I think that we don't know what those
25 conversations are; but just as a point of clarification, this

1 is the first of these three witnesses to testify.

2 So the rule on witnesses, as I've always understood it, is
3 when the witness is on the stand, other witnesses are excluded.
4 I'm not aware of any rule barring, nor do I think I could
5 bar -- I'll be happy to communicate to any lawyer out there the
6 Court's concerns --

7 **THE COURT:** That may be the answer.

8 **MR. FRENTZEN:** -- but I don't know -- in other words,
9 if communications took place after trial began but before
10 Mr. Truitt testified --

11 **THE COURT:** Yeah.

12 **MR. FRENTZEN:** -- I don't know that the exclusion of
13 witness rules even applies to that, nor do I think that I could
14 bar those lawyers from communicating with each other. So I
15 don't --

16 **THE COURT:** I think that's probably right.

17 **MR. FRENTZEN:** So that's the only point I wanted to
18 raise.

19 **THE COURT:** Okay. That may be right and this may be
20 much ado about nothing.

21 **MR. FRENTZEN:** So to let the Court know, I'm happy
22 going forward to communicate that to the lawyers involved, that
23 Mr. Truitt is on the stand and we expect that there's not going
24 to be some way around the Court's rule on witnesses; but the --

25 **THE COURT:** Okay.

1 **MR. FRENTZEN:** -- pretestimony communications, I think
2 they're out of our hands.

3 **THE COURT:** And that's a significant distinction, and
4 I certainly would think, without the benefit of argument, that
5 you should instruct the witness and his counsel that he's not
6 to discuss the testimony with -- the witness can certainly talk
7 to his lawyer about his testimony. That's -- I'm not
8 preventing that. What I am saying is that neither the witness
9 nor the witness' attorney can speak to some prospective witness
10 about what this witness has said during the course of his
11 testimony.

12 **MR. FRENTZEN:** Understood, and we're happy to
13 communicate that out, Your Honor. I just wanted to clarify.

14 **THE COURT:** So that may take care of the problem.
15 Thank you.

16 **MR. KEKER:** Thank you.

17 (Recess taken at 2:24 p.m.)

18 (Proceedings resumed at 2:35 p.m.)

19 (Proceedings were heard in the presence of the jury:)

20 **THE COURT:** Let the record reflect all jurors are
21 present. Thank you.

22 **MR. KEKER:** Thank you, Your Honor.

23 **Q.** Mr. Truitt, let's shift to the Vatican deal. You were
24 sitting in a deck chair in West Palm Beach on the beach on what
25 day when you first heard this about deal?

1 A. April 1st, 2010.

2 Q. April 1st, 2010. One day after the quarter closed; right?

3 A. Yes, sir.

4 Q. And how long had you been at West Palm Beach with your
5 family?

6 A. A few days. I don't know exactly.

7 Q. So were you there on the 29th?

8 A. I don't remember --

9 Q. Of March. Excuse me.

10 A. I don't remember when I left.

11 Q. Were you there -- well, was the day that you were sitting
12 there that you remember so vividly as April 1st -- was that the
13 first day you had gotten to the beach?

14 A. I don't believe so, but I don't remember. I don't
15 remember my travel itinerary for 2010. I don't know.

16 Q. So you don't know where you were the 31st of March?

17 A. I believe that I was already there, but I -- I could be
18 wrong, so I'm not going to --

19 Q. The 30th of March, where were you the 30th of March?

20 A. I'm not sure, sir.

21 Q. You said Mr. Egan called and you told you about the
22 Vatican deal and asked if MicroTech was interested?

23 A. That's right.

24 Q. He wasn't asking you about Discover Tech; is that right?

25 A. Correct.

1 Q. He was asking about MicroTech.

2 Did he tell you why he was asking you to talk to MicroTech
3 about the Vatican deal?

4 A. He didn't tell me why, but I -- again, he did that
5 routinely. Folks from Autonomy would utilize me as kind of a
6 go-to for MicroTech.

7 Q. And what did he tell you and ask you to do during this
8 telephone conversation?

9 A. He asked me to have a conversation with MicroTech and see
10 if they would be interested in talking to them more about that
11 deal.

12 Q. Did he tell you that -- that he had been in touch with
13 MicroTech already?

14 A. No. He did not mention that.

15 Q. So your understanding was the first time MicroTech was
16 going to hear about this deal was when you called your brother
17 and told him about it; right?

18 A. Yes.

19 Q. And, in fact, is that what happened?

20 Was your brother surprised to hear about the Vatican deal
21 when you called him?

22 A. He didn't indicate that he had heard about the deal prior
23 to my call.

24 Q. Okay. And tell us again, what did Mr. Egan tell you the
25 deal was?

1 **A.** He said it was a deal at the Vatican. He gave me the --
2 just the basics. How big -- you know, what the number was,
3 what the order was. He gave me a little bit of background that
4 I gave you this morning. It was a very short call.

5 **Q.** He said that Autonomy had people in the Vatican Library
6 digitizing records and so on?

7 **A.** Yes, sir.

8 **Q.** Did he say anything about when the deal was expected to
9 close?

10 **A.** I don't recall specifically when he said it was supposed
11 to close, but he indicated that it was going well and
12 anticipated that it would close soon.

13 **Q.** And then did you pass on all the information that Mr. Egan
14 had given you to your brother when you called him?

15 **A.** Yes.

16 **Q.** And did you call him that same day?

17 **A.** Yes.

18 **Q.** So your brother is learning about this on April 1st?

19 **A.** Correct.

20 **Q.** Did you call Mr. Cronin and talk to him about it?

21 **A.** I believe I did call Mr. Cronin after I spoke to my
22 brother, after my brother had talked to Mr. Jimenez.

23 **Q.** And you called Mr. Cronin for what reason?

24 **A.** To let him know that MicroTech was interested in
25 potentially pursuing that -- that deal.

1 Mr. Cronin was working with MicroTech, much the way he was
2 with me in terms of helping to process orders, and so he got in
3 touch with -- with MicroTech at that point, Mr. Cronin.

4 Q. So Mr. Cronin was just -- learned about it from you on
5 April 1st? That was the first Mr. Cronin knew about it?

6 A. Yes.

7 Q. Would it surprise you if you -- if Mr. Cronin testified he
8 had been working on this for a couple of months?

9 A. Yes, that would surprise me.

10 Q. Would it surprise you if your brother testified that
11 they'd been working on it at the end of the quarter? They met
12 the 27th, 28th, 29th, working on this Vatican deal?

13 A. That would surprise me.

14 Q. Would it surprise you to know that your brother was very
15 excited about the deal and was worried that Autonomy would be
16 able to close it in the quarter so that they wouldn't get to
17 participate?

18 A. That would surprise me.

19 Q. Okay. So if the two of them said that they'd been working
20 on it in the past quarter and discussing it and preparing
21 papers, that would be something that's just contrary to your
22 recollection?

23 A. Yes. I -- I would find it highly unusual that they would
24 not have mentioned that to me when I spoke with them about
25 that.

1 Q. Did you have discussions with Mr. Egan towards the end of
2 that quarter in late March?

3 A. Yes.

4 Q. Would you look at 5605, which I'll represent to you are
5 your phone records during this period.

6 Move them in, Your Honor.

7 THE COURT: 5605 admitted.

8 (Trial Exhibit 5605 received in evidence)

9 MR. KEKER: And we have a demonstrative, 5742, which I
10 would like to present to the jury for demonstrative purposes
11 rather than looking at those tiny little phone records.

12 THE COURT: Admitted for those purposes.

13 (Trial Exhibit 5742 - Demonstrative received in
14 evidence)

15 MR. KEKER: Could we put up the demonstrative.

16 Q. Let's start back on the 29th of March.

17 You and Mr. Egan talked for 13 minutes that day. Do you
18 know what you talked about?

19 A. That would have been about Citi and PMI.

20 Q. The Citi and PMI deals were closing with Discover Tech in
21 that same quarter?

22 A. Yes, sir.

23 Q. And then you talked to him again on the 30th for 18
24 minutes?

25 A. Yes.

1 Q. And then you talked to Mr. Cronin for 10 minutes and then
2 eventually Mr. Egan down at the bottom for 16 minutes?

3 A. Yes.

4 Q. During any of those calls, did you talk about the Vatican?

5 A. No.

6 Q. Are you sure?

7 A. Yes. The first I'd heard of it was the 1st.

8 Q. On the 31st, were you in -- let's go to the next page.

9 Were you in West Palm Beach on the 31st?

10 A. I believe that I was.

11 Q. Okay. Did you have calls from Mr. Cronin in the morning?

12 A. It appears that I did.

13 Q. And did you talk to Mr. Egan on the 31st?

14 A. Yes.

15 Q. What did you talk to him about?

16 A. PMI and Citi.

17 Q. Did you call your brother on the 31st?

18 A. It looks like I either called him or tried to call him for
19 one minute.

20 Q. Did you get -- did you ever get through to him?

21 A. I -- it doesn't look like -- I don't know what one minute
22 means, whether that was a call that got through or not.

23 Q. Okay. Why did you want to talk to your brother on the
24 31st?

25 A. It's possible that -- it's possible that Mr. Egan was

1 wondering whether MicroTech would be interested in hearing
2 about deals, but I don't know.

3 Q. Like the Vatican deal?

4 A. Well, he hadn't talked to me about the Vatican yet, so I
5 don't think it would have been about that specifically.

6 Q. So then the next page, you talked to Mr. Egan again for 9
7 minutes at 5:20?

8 A. Yes.

9 Q. And then again at the end of the -- at 1:03 p.m., 9
10 minutes with Mr. Egan?

11 A. Correct.

12 Q. None of those calls were about the Vatican?

13 A. No, sir.

14 Q. Was Mr. Egan working with your brother and John Cronin on
15 the Vatican during those days?

16 A. If he was, he didn't indicate it to me.

17 Q. He called you on April 1st and said, "I want you to bring
18 something to the attention of MicroTech"?

19 A. Yes.

20 Q. And what were you and Mr. Cronin talking about all those
21 times?

22 A. We were probably talking about Citibank and PMI. They
23 were big deals and they required lots of paperwork and drafts
24 and, you know, what we had to do to get those orders in on
25 time.

1 Q. Did you learn from your brother that MicroTech got a
2 letter from the Air Force questioning their participation in
3 the Vatican deal?

4 A. I was aware of that.

5 Q. And you're a 32 percent owner of MicroTech; right?

6 A. Yes.

7 Q. Did you look at the letter that the lawyers sent on behalf
8 of MicroTech?

9 A. I did.

10 Q. Okay. Would you look at 5740.

11 THE COURT: Admitted.

12 BY MR. KEKER:

13 Q. Why don't you get that in front of you rather than rely on
14 the screen. 5740 in Volume 3.

15 A. Okay.

16 Q. And you didn't want your company to submit an inaccurate
17 letter to the Air Force, did you?

18 A. Well, I had nothing to do with the response to this. I
19 read this response after it had been submitted.

20 Q. Okay. And when you read it, did you notice -- look over
21 on page 5, which is part of the description of the Vatican
22 Library transaction.

23 A. Yes.

24 Q. And do you see that the lawyer for MicroTech represented
25 to the Air Force that Steve Truitt approved MicroTech's

1 software purchase from Autonomy for 11.55 million on
2 March 31st, 2010?

3 **A.** Yes.

4 **MR. LEACH:** Your Honor, that is not what Exhibit 5740
5 says.

6 **THE COURT:** One moment, please.

7 That's a question for redirect, isn't it?

8 **MR. LEACH:** Your Honor, my 5740 is a letter from the
9 Air Force to Mike Lynch, Sushovan Hussain, Steve Chamberlain,
10 Andy Kanter.

11 **MR. KEKER:** A mistake has been made in the binders,
12 Your Honor. I'm looking at --

13 **THE COURT:** You're looking at a letter from MicroTech
14 to the Air Force? That's not 5740.

15 **MR. KEKER:** I'm looking at a letter from Jeffrey
16 Newman, Timothy Sullivan, Scott Lane, counsel for
17 MicroTechnologies, to Rodney Grandin, and I guess we're just
18 going to have to get this straightened out with another --

19 **THE COURT:** Exhibit. Okay.

20 So I'm going to strike it unless it's already in. My
21 recollection that something like this is already in, 5740.

22 **MR. KEKER:** But apparently I'm looking at a document I
23 thought was 5740, and we put the wrong one in the binders,
24 apparently. And so I would like to use the one that I thought
25 was 5740 and mark it 5740.

1 **THE COURT:** Well, something else is marked 5740. I
2 think something else is marked 5740. A letter -- at any rate,
3 in order to continue this, just show it to him, and we'll
4 straighten out the number later. Okay?

5 **THE WITNESS:** I remember the response. I mean, I know
6 what you're asking about, if that helps.

7 **THE COURT:** Well, it may or may not.

8 **MR. KEKER:** It does help.

9 **THE COURT:** Why don't you look at the letter that
10 Mr. Keker has, and then he'll ask you a question about it.

11 **BY MR. KEKER:**

12 **Q.** Is this the letter from MicroTech's lawyers to the
13 Air Force?

14 **A.** Yes, sir.

15 **THE COURT:** What is the date of the letter?

16 **THE WITNESS:** November 6, 2013.

17 **THE COURT:** November?

18 **THE WITNESS:** November.

19 **MR. KEKER:** 6, 2013.

20 **THE COURT:** The document on your exhibit list is
21 September 6.

22 **MR. KEKER:** That's a mistake and it --

23 **THE COURT:** It will be remedied.

24 **MR. KEKER:** It will be rectified.

25 This is the document that I asked him about, which is the

1 letter to the Air Force, and I think what we put in is the
2 letter from the Air Force, which was a mistake.

3 **MR. LEACH:** Your Honor, is there an extra copy, just
4 so I can read along?

5 **MR. KEKER:** I don't have an extra copy, but I'm happy
6 to share this one.

7 **THE WITNESS:** I'm looking at the paragraph that you
8 were referencing where it says that Steve Truitt approved
9 MicroTech software purchase on March 31st, 2010.

10 **BY MR. KEKER:**

11 **Q.** Look at the next page, too, where it says it again.

12 **A.** Yes. Okay.

13 **Q.** Did you correct that when you saw it?

14 **A.** No.

15 **Q.** Different subject.

16 And that is the Q4, fourth quarter, 2010, Bank of America
17 purchase that you testified about before; right?

18 **A.** Right.

19 **Q.** And one thing you testified about was a 7.35 or \$7 million
20 purchase with Discover Tech as the reseller with the end user
21 the Bank of America that Egan brought you?

22 **A.** Yes.

23 **Q.** And you agreed to do it?

24 **A.** Yes.

25 **Q.** And you were -- and Discover Tech was at risk?

1 A. Yes, sir.

2 Q. What does "at risk" mean? Explain that to the jury.

3 A. It means if the deal doesn't happen, we still have to pay
4 for the software that we've agreed to purchase.

5 Q. Okay. You have agreed to purchase and own some software,
6 whether or not it sells on to the end user?

7 A. Yes, sir.

8 Q. And "at risk" means you can get stuck with it and you
9 still have the debt?

10 A. Yes.

11 Q. And that's the basis on which you made this agreement with
12 Mr. Egan and Autonomy?

13 A. Correct.

14 Q. And Mr. Hyson confirmed that debt?

15 A. Yes.

16 Q. On your behalf?

17 Let's look at 14 -- I want to put in 1438. 1438 is a memo
18 from Malcolm Hyson to Steve Chamberlain returning the --

19 A. What volume are we in?

20 Q. Volume 1.

21 THE COURT: 1438 made.

22 (Trial Exhibit 1438 received in evidence)

23 BY MR. KEKER:

24 Q. Can we put up the date.

25 This is Mr. Hyson, January 12th, 2011. Now the \$7 million

1 sale was at the end of 2010. And this is Mr. Hyson saying here
2 is the signed scanned image and it's the Autonomy debtor
3 confirmation request that relates to this \$7 million, doesn't
4 it?

5 **A.** Yes.

6 **Q.** And then on January 25th, 2011, you got an email from
7 Mr. Egan, which the jury saw this morning as Exhibit 1188. Can
8 we get that back.

9 **MR. LEACH:** I think it's 1488, Your Honor.

10 **MR. KEKER:** I beg your pardon, 1488.

11 **Q.** And this is -- refers to a one-off reseller agreement to
12 be signed by Discover Tech, and Mr. Egan is writing you saying,
13 "I'll call you this afternoon around 4:00 p.m. It will be
14 important that this be signed as is with no additions or
15 modifications late today and scanned and emailed back."

16 What did you understand he was saying to you?

17 **A.** Simply that the agreement was going to need to be agreed
18 to as is, meaning we weren't going to negotiate anything, we
19 weren't going to do anything to it, other than -- other than
20 scan it or sign it and send it back.

21 **Q.** Well, he didn't say "sign it and send it back." He said
22 "scan it and send it back." What did you understand he was
23 saying there?

24 **A.** Well, I understood that to mean that we would sign it and
25 send it back.

1 Q. Okay. And then it says, "This covers the excess amount of
2 the order." What does that refer to?

3 A. He said that the size of the deal was increasing and
4 that -- and that -- so it went from that 25,000 users up to
5 unlimited users and that it had grown and they wanted to add --
6 yeah. They wanted to add this order to the original order.

7 Q. Did he say that he had made a mistake and he needed to fix
8 it?

9 A. I'm sorry. To fix -- to fix what?

10 Q. To fix the size of the order. It should have been
11 10,375,000 instead of 7,375,000.

12 A. No. I don't recall him saying that there was a mistake.

13 Q. But he said he needed to fix the order -- he needed to
14 cover the excess amount?

15 A. Yes.

16 Q. What is the excess amount?

17 A. The difference between 7 million and the additional
18 3.6 million.

19 Q. Was that an amount that should have been in the original
20 order? Is that what he said to you?

21 A. No. He -- I don't recall Mr. Egan saying that to me.

22 Q. You had this -- this order signed by Mr. Hyson. Let's
23 look at 1485, which is in evidence. Next page. Let's go to
24 the signature page of 1485.

25 This is the one Mr. Hyson signed and dated it January

1 25th; right?

2 A. Yes.

3 Q. Let's look at 1500, which is in evidence,
4 one-five-zero-zero. And the second page -- the third page is
5 Mr. Hyson's signature, again January 25th.

6 Go back to the first page, please. First page of the
7 exhibit. Yeah.

8 And that is a memo that you sent to Stouffer Egan on the
9 next day, January 26th; right?

10 A. Yes.

11 Q. And then somebody called you and said, "No, you've got to
12 modify the date"?

13 A. Yes.

14 Q. Who called?

15 A. I believe that was Mr. Egan.

16 Q. And did he tell you why you had to modify the date?

17 A. Because it was going to be part -- it was supposed to be
18 part of that first -- it was an add-on to the first deal that
19 we did, and as part of that first order.

20 Q. You started to say, "It was supposed to be part of that
21 first deal that we did"; right?

22 A. What he said was the deal is growing and that this
23 3.6 million is the amount that it's growing and that it should
24 be -- yes. It should be viewed as part of the original deal.

25 Q. Do you remember Mr. Egan's exact words, Mr. Truitt?

1 A. No, sir.

2 Q. Okay. Where do you get the words that you just used?

3 A. That's just me trying to explain what I heard, what was
4 going on. I'm using my own words.

5 Q. And what Mr. Egan had said was, "This was supposed to be
6 part of the original deal that we made with you for the Bank of
7 America" -- it was supposed to be 10.675?

8 A. Well, the original 7 million included 25,000 licenses, so
9 if the original deal was supposed to be unlimited, I could see
10 that that would be a reason to have it be 10-point-some-odd
11 million. But what it looked like to me was that the deal size
12 was growing and it changed the terms of the -- of the deal.

13 Q. Did you tell Mr. Hyson to sign the documents with the
14 earlier date?

15 A. Yes.

16 Q. Okay. And did he?

17 A. Eventually. He made the --

18 Q. Why did you have Mr. Hyson do it and not you?

19 A. He signed all of those routinely. That was his role.

20 Q. Let's look at your phone records, 5885.

21 Your Honor, I'd move in, phone records for this period.

22 THE COURT: Admitted.

23 (Trial Exhibit 5885 received in evidence)

24 BY MR. KEKER:

25 Q. Let's look at the relevant -- and then we have a

1 demonstrative, which is 5744, to show the jury.

2 **THE COURT:** Admitted.

3 (Trial Exhibit 5744 - Demonstrative received in
4 evidence)

5 **BY MR. KEKER:**

6 **Q.** Can --

7 **THE COURT:** 5744 or 43?

8 **MR. KEKER:** I have 44 in my notes, but I've been
9 wrong. 5744.

10 **THE COURT:** Okay. Admitted for demonstrative. And
11 the records were what number?

12 **MR. KEKER:** The records are 5885.

13 **THE COURT:** Admitted.

14 **BY MR. KEKER:**

15 **Q.** So let's look on the 25th.

16 You had some calls with Mr. Scott, and then we remember
17 that email that says "call me at 4:00" or "call me after 4:00."

18 You tried to call Mr. Egan and he called you back and you
19 talked for 19 minutes?

20 **A.** Yes, sir.

21 **Q.** And that's when he explained what the problem was with the
22 original deal; right?

23 **A.** Yes.

24 **Q.** Okay. And then the next day, starting in the morning, you
25 had calls with Mr. Scott. He called -- you called him; he

1 called you back. You had calls from Mr. Egan a couple of
2 times. And this is when you were trying to get all of this
3 straightened out; right?

4 **A.** Correct.

5 **Q.** And then you also had, on the 26th, a lot of text
6 messaging with Mr. Scott and Mr. Egan; right?

7 **A.** Yes.

8 **Q.** And your records don't show how long the text messages are
9 or how much -- how much there was in them; right?

10 **A.** No.

11 **Q.** It just shows text messaging and the times.

12 And then look at the next page.

13 What was all that about, this text messaging between Scott
14 and you and Egan and back and forth, back and forth, back and
15 forth?

16 **A.** I think they were just looking to get the paperwork
17 correct and back to them.

18 **Q.** And the correct paperwork was -- well, I guess -- let's
19 finish. More text messaging that day.

20 Next page.

21 And the correct paperwork was the deal signed as of
22 December 31 that you sent to Mr. Hyson; right?

23 **A.** Yes.

24 **Q.** Now, you've told us that you were concerned about
25 backdating and all that business. Were you concerned about

1 this?

2 A. I honestly wasn't.

3 Q. Would you look at 5626.

4 THE COURT: Admitted.

5 (Trial Exhibit 5626 received in evidence)

6 BY MR. KEKER:

7 Q. And can we see the next page. And this is the same deal,
8 the signature page.

9 And this is Mr. Hyson signing that the deal happened on --
10 signing it December 31, 2010.

11 Did you direct him to do that?

12 A. Yes.

13 Q. And why did you direct him to do that?

14 A. Because I was asked to do that.

15 Q. By whom?

16 A. By Mr. Egan.

17 Q. And did Mr. Egan explain to you what problem of his he was
18 going to solve by you having Mr. Hyson do that?

19 A. It was -- it was explained in such a way that it -- it was
20 simply adding to the original deal. I believe that he said
21 something along the lines of, you know, the maintenance for the
22 order would have -- would, you know -- would have been off if
23 we had two -- if we had two dates, so having it all on
24 December 31st made sense.

25 But, again, it was so late, it was, you know, late

1 January. I did not -- I just -- it didn't occur to me that
2 this could be a -- you know, we're trying to squeeze it in the
3 later quarter scenario. Never crossed my mind.

4 So we gave them the paperwork the way they wanted it
5 filled out.

6 **Q.** Okay. I'm looking for one exhibit. Excuse me. I'm not
7 finding it.

8 Anyway, you sent off the document to Mr. Scott after all
9 that communication with him dated December 31?

10 **A.** Yes.

11 **Q.** You never talked to Mr. Hussain about any of this, did
12 you?

13 **A.** No.

14 **Q.** Let's talk about one more deal, and that is this Prisa
15 deal.

16 In late March of 2011, you were no longer employed by
17 MicroLink?

18 **A.** Correct.

19 **Q.** And you no longer were an Autonomy employee?

20 **A.** Yes.

21 **Q.** On April -- on -- and this is one in which your memory has
22 gotten better with the passage of time; right?

23 **A.** I'm not sure what you mean.

24 **Q.** Well, what I mean is when you met with Mr. Leach back in
25 October of 2014, four years ago, you said that Autonomy

1 approached you within the last days of the quarter and it could
2 have been the last day. Do you remember that?

3 **A.** Yeah.

4 **Q.** And you said that ThinkTech was -- they had some deals,
5 slate of deals?

6 **A.** Yes.

7 **Q.** And they said that ThinkTech was -- and this was Egan;
8 right?

9 **A.** Yes.

10 **Q.** ThinkTech was an existing customer, FINRA was a near term
11 thing, and your best recollection was that they talked about
12 Prisa and agreed they would do it, but you were not a hundred
13 percent certain of that. That's what you told him the first
14 time you talked to him about this?

15 **A.** Yeah. I couldn't say one hundred percent that we did not
16 discuss Prisa in a slate of deals. I just know that we didn't
17 paper the deal until Monday.

18 **Q.** Okay. And you understand or understood by this point that
19 under the IFRS, the English accounting rules, if you agree to
20 the deal and it's a real deal, then it's okay to paper it
21 later?

22 **MR. LEACH:** Objection. Foundation.

23 **THE COURT:** Sustained.

24 **THE WITNESS:** I had no knowledge of that --

25 **THE COURT:** Wait. Sustained.

1 **THE WITNESS:** That was one of the things that I was --

2 **MR. LEACH:** Your Honor --

3 **THE WITNESS:** I was -- sorry.

4 **BY MR. KEKER:**

5 **Q.** The objection was sustained.

6 Let me ask you this: Did you understand that under these
7 English accounting rules, the international accounting rules,
8 that if you made a deal and you papered it the next day or the
9 day after, whatever, as long as you made the deal timely, it
10 could be -- that's when it happened?

11 **A.** No. I -- I was not under that understanding at that time,
12 which is why I was concerned.

13 **Q.** All right.

14 Prior to April 4 -- you were asked in the grand jury,
15 prior to April 4, had you heard of Prisa, and you said you
16 weren't sure; right?

17 **A.** Yes.

18 **Q.** And so let me ask you now, was Prisa part of the slate of
19 deals discussed at the end of the quarter, along with
20 ThinkTech, FINRA, so on?

21 **A.** It could have been, I do not -- I can't say for certainty
22 one way or the other.

23 **Q.** And did you agree to act as a reseller for Prisa at the
24 same time you agreed to FINRA and ThinkTech?

25 **A.** They -- we talked about a slate of deals, the deals that

1 they asked me to act upon and send paperwork for that day where
2 ThinkTech and -- I'm sorry -- FINRA and ThinkTech.

3 Had they asked me to do -- to send them paperwork on
4 Prisa, there's a good chance I would have sent it. I just
5 don't think that they had asked at that point for that
6 paperwork.

7 **Q.** Did you tell the grand jury --

8 **THE COURT:** Would you cite to the page and line?

9 **MR. KEKER:** 61.

10 **THE COURT:** Line?

11 **MR. KEKER:** 6 through 14.

12 **THE COURT:** Let the Government read it.

13 **MR. LEACH:** I don't think it's inconsistent.

14 **THE COURT:** Pardon?

15 **MR. LEACH:** I don't think it's inconsistent.

16 **THE COURT:** Okay. Now I have to look at it. Does
17 somebody want -- Mr. Keker, if you want to ask him the
18 question, you have to hand it up to me.

19 **MR. KEKER:** I'm sorry, Your Honor. It's exhibit --

20 **THE COURT:** Oh, it is an exhibit?

21 **MR. KEKER:** 5199.

22 **THE COURT:** All right. Sorry. Again, page?

23 **MR. KEKER:** 5199, page 61, Your Honor.

24 **THE COURT:** Hold on.

25 **MR. KEKER:** I'm asking whether or not --

1 **THE COURT:** And lines --

2 **MR. KEKER:** Lines 6 -- the question starts at 6, but
3 what I'm looking at is 10 through 14 is the answer.

4 **THE COURT:** Okay. Okay. Let me read it.
5 I'm not going to allow you to ask it?

6 **MR. KEKER:** Pardon?

7 **THE COURT:** I'm sustaining the objection. I don't
8 think it's inconsistent with his testimony. If you want to
9 argue that, we can do it later. Okay.

10 **BY MR. KEKER:**

11 **Q.** Can you say one way or the other whether or not you agreed
12 to the Prisa deal before April 1st; in other words, in the
13 quarter? Can you say one way or the other?

14 **A.** Not a hundred percent.

15 **Q.** How about 50 percent?

16 **A.** I -- I can tell you when I agreed to send him the
17 paperwork, which is the request I got on Monday. On Friday, it
18 very well could have been in a slate of deals that we talked
19 about. I cannot say for sure.

20 **Q.** Okay. And so on Friday is the day that you were talking
21 about the slate of the deals and that was the last day of the
22 quarter, was it --

23 **A.** Yes.

24 **Q.** Or Thursday?

25 **A.** Yes.

TRUITT - CROSS / KEKER

1 Q. And then on -- after the weekend on Monday, Mr. Egan sent
2 you paperwork and asked you to date it correctly March 31?

3 A. Yes.

4 Q. Okay. Who prepared that purchase order?

5 THE COURT: What year is this?

6 MR. KEKER: 2011.

7 THE WITNESS: Are you talking about the one-off
8 agreement?

9 BY MR. KEKER:

10 Q. The Prisa agreement. The Prisa purchase order.

11 A. Someone -- someone at Autonomy, Mr. Scott, perhaps.
12 Mr. Egan. I'm not sure.

13 Q. Okay. This is the one that your IM chat, Instant
14 Messaging chat, with Mr. Hyson is about?

15 A. Yes, sir.

16 Q. Let's look again at 1725, which is in the Government's
17 binder, I think. 1725 is in evidence so we can just put it up.

18 And this says, "Autonomy wants me to pdf an order. Said
19 that it will not change the date on the document if it's a
20 pdf."

21 And you're asking Mr. Hyson about that in an Instant
22 Messaging that looks like it happened on -- that you put into
23 an email on April 4th; right?

24 A. Yes.

25 Q. Did Mr. Egan explain to you why he wanted this pdf so that

1 it won't change the date?

2 **A.** I don't recall an explanation for that. Just that he
3 wanted to protect the date so that it would show the end of the
4 quarter, 31st.

5 **Q.** He wanted it to show the end of the quarter?

6 **A.** Yes, sir.

7 **Q.** Did he say that he wanted it to show the end of the
8 quarter because that's when you made the deal?

9 **A.** I don't recall exactly what was said, but he certainly
10 wanted to include it with the rest of the deals for that
11 quarter.

12 **Q.** And Mr. Hyson -- look at 5592. If it's not in evidence.
13 I would move it in. It's Hyson to Stouffer Egan.

14 **THE COURT:** 5592 admitted.

15 (Trial Exhibit 5592 received in evidence)

16 **MR. KEKER:** Can we put up the first page.

17 **Q.** This is on April 4th. Mr. Hyson is sending to Stouffer
18 Egan a signed copy of the Prisa VAR agreement, and turn over
19 the page and let's look at the signature page. And Mr. Hyson
20 has signed it March 31, 2011.

21 Did you tell him to do that?

22 **A.** Yes, sir.

23 **Q.** Can we go back to the first page. And he's emailing to
24 stouffere@comcast.net. What is that?

25 **A.** I believe that was Stouffer Egan's personal email account.

1 Q. He had an Autonomy email account that we've seen in a lot
2 of these emails; right?

3 A. Yes.

4 Q. But he's asking that this be sent to his personal email
5 account?

6 A. Yes.

7 Q. Did he explain to you why he wanted that to happen?

8 A. I don't know that he explained it, but to me that was
9 another -- it was another difference from the way we would
10 normally conduct business.

11 So he wanted it sent to his personal account, and that's
12 what we did.

13 Q. Okay. So what we've got is the Prisa discussions that you
14 don't really remember when they started, you don't really
15 remember when the deal was made -- was agreed to, but you do
16 know that Egan is telling you "I need this paperwork done as of
17 March 31"?

18 A. Yes.

19 MR. LEACH: Objection. Compound, argumentative.
20 Misstates the testimony.

21 THE COURT: Overruled.

22 BY MR. KEKER:

23 Q. And he's asking you to scan it so that it doesn't have a
24 date on it. That's the back and forth with Hyson; right?

25 A. Yes.

1 Q. And then he's asking you to send it to his private email
2 account?

3 A. Yes.

4 Q. And did he tell you why he wanted all that trouble to
5 go -- to be gone to?

6 A. I don't recall him saying it specifically, send it -- why
7 he wanted me to send it there.

8 Q. Okay. Now, after this, you were very interested in
9 selling your software to Autonomy; right?

10 A. Sure.

11 Q. Let's look at 1769. That's in evidence. And this is the
12 email that the jury saw earlier about "today's meeting" and
13 it's to Sushovan Hussain and Stouffer Egan.

14 And you're saying, "I wanted to thank you both for taking
15 the time to meet with me today regarding expanding our
16 partnership. Discover Technologies' software solutions will
17 augment Autonomy's industry leading technology and give our
18 joint customers increasing value. I look forward to working
19 with you in the coming weeks to structure a distribution
20 agreement and continuing to build our partnership in the years
21 to come."

22 What distribution agreement are you talking about?

23 A. For our DiscoverEngine product that we ultimately did sign
24 a few months later.

25 Q. So you have a product -- it used to be DiscoverPoint and

1 now it's evolved through framework and now it's DiscoverEngine;
2 is that right?

3 **A.** Not exactly. It's a separate product.

4 DiscoverPoint is more of a front-end interface. This
5 Engine product is all server, back end. There is no front-end
6 user interface. It's a different -- completely different
7 product that does a completely different thing.

8 **Q.** You heard that Mr. Hussain was in town and you wanted to
9 try to get him interested in buying it; right?

10 **A.** Sure.

11 **Q.** So one of the reasons for -- at least one of the reasons
12 for this meeting was to set up a -- basically a sales meeting
13 where you could pitch Mr. Hussain on this distribution idea?

14 **A.** Yes.

15 **Q.** Okay. And you asked Mr. Egan to set up a meeting with
16 Mr. Hussain so you could pitch him on this distribution idea?

17 **A.** Yes.

18 **Q.** And your testimony is that you walked into the meeting and
19 you started bracing Mr. Sushovan Hussain about -- about
20 backdating?

21 **A.** Yes.

22 **Q.** You were very upset about this, but you weren't upset
23 about the Vatican, which you told us was backdated or the -- or
24 the thing that had happened with Hyson back in January, but now
25 you're upset?

1 A. Yes.

2 Q. And you're upset enough so that you're going to use this
3 sales meeting to tell Mr. Hussain that you're upset?

4 A. Well, the -- the meeting had two purposes, the first of
5 which I was very clear to Mr. Scott and Mr. Egan that I really
6 wanted to have that discussion with Mr. Hussain.

7 Q. This is --

8 A. And, yes, while I have his ear, yeah, I'm going to try to
9 sell him our software, which I think he is going to be
10 interested in.

11 Q. Why didn't you say in this email about "today's meeting,"
12 "Thank you for your reassurance about the accounting issues,
13 and, by the way, I want to have a great partnership"? Why
14 didn't you put in both, if that actually had happened?

15 A. I was reassured at that point and I didn't see the point
16 of -- of continuing down that path.

17 Q. Had you ever met Mr. Hussain before?

18 A. Before April 2011, yes.

19 Q. Okay. How many times?

20 A. Oh, I don't know. Half a dozen, maybe.

21 Q. Did you talk to Mr. Egan since this investigation began
22 about this meeting?

23 A. I haven't had any discussions with Mr. Egan.

24 Q. Have your lawyers had discussions with his lawyers, if you
25 know?

1 A. My lawyers have had discussions with his lawyers, and are
2 you asking specific to this meeting?

3 Q. No -- well, do you know if they've specifically talked
4 about meeting?

5 A. I -- I can't be a hundred percent sure, but I think it's
6 likely.

7 Q. Okay. And you know that the lawyers are communicating to
8 each other "this is what Dave remembers," "what does Stouffer
9 say," that kind of thing?

10 A. Yeah.

11 MR. LEACH: Objection. Foundation.

12 BY MR. KEKER:

13 Q. All right. Thank you.

14 Let me ask some questions about the MicroLink acquisition.
15 Just so that -- to make sure the jury understands, MicroLink,
16 as far as you were concerned, was a very successful company,
17 wasn't it, at the time it was acquired?

18 A. Yes, sir.

19 Q. And it had customers in the federal government, including
20 NASA, the Air Force, Army, State Department, Secret Service,
21 the TSA folks that brace us all at the airport, the Federal
22 Reserve, Joint Forces Command, Department of the Energy, and
23 the Navy; right?

24 A. Yes.

25 Q. And commercial customers, including GlaxoSmithKline,

1 Lockheed Martin, Medtronic, Linklaters, and I'm sure others?

2 A. Yes, sir.

3 Q. Okay. Now, you said that at some point in 2009, Mr. Egan
4 approached you about Autonomy buying MicroLink?

5 A. Yes.

6 Q. No one at Autonomy ever mentioned MicroLink's debt to
7 Autonomy as the reason that they wanted to buy the company, did
8 they?

9 A. No.

10 Q. What happened was that Mr. Hussain and Mr. Egan met with
11 you and Mr. Rizek, and somebody said to Mr. Hussain and
12 Mr. Egan, "We understand Autonomy -- Autonomy's subsidiary has
13 lost its security clearance"?

14 A. That was part of our conversation, yes.

15 Q. Who said that to them?

16 A. I'm sorry? Who said that to whom?

17 Q. Who said to Egan and Hussain, "I understand Autonomy has
18 lost its security clearance"?

19 A. It came up in the meeting that Mr. Rizek and I had with
20 Mr. Hussain. I don't recall who brought it up or who knew
21 what.

22 Q. Was Mr. Hussain surprised that you knew that?

23 A. I remember having a discussion with him about it and I
24 remember him being excited about the fact that we had one and
25 could help solve that problem. I don't remember, again,

1 exactly how it -- how the --

2 Q. Tell the --

3 A. Whether he was surprised or not.

4 Q. Tell the jury what you remember about the conversation
5 about what Mr. Hussain saw as a problem for Autonomy that you
6 could help solve.

7 A. They had a company -- they had acquired a company called
8 Verity. Verity had a top secret facility clearance at one
9 time.

10 When Autonomy took over that company, eventually they lost
11 it. My understanding was it was mismanaged. It was -- the
12 government watches very carefully, and, you know, for whatever
13 reason -- I don't know the exact details -- they -- they took
14 that away from them, which impacted Autonomy's ability to
15 interface and do services work for these intel and DOD
16 customers.

17 Q. Or to sell software to them?

18 A. Or to sell software to them.

19 Q. So Autonomy, an English company, needed access to these
20 highly-cleared federal customers, and they had just lost their
21 access; right?

22 A. Yes.

23 Q. MicroLink had that access?

24 A. Correct.

25 Q. Mr. Hussain was very excited about the possibility of

1 getting that access back by acquiring MicroLink?

2 A. Yes.

3 Q. And the way they got the access back, you've already
4 described, was they had to put a fence around MicroLink, and
5 MicroLink had its own little board of directors of generals?

6 A. Yes.

7 Q. And the communications were very limited between the two
8 companies, but at least they had access to the federal sales?

9 A. And it was the communication and the firewall issue, as I
10 recall, that was really what kind of did them in. They didn't
11 adhere to that strictly enough the first go-around.

12 Q. Okay. And this is a huge market. The selling this kind
13 of software for unstructured data into the federal intelligence
14 agencies is an enormous market, isn't it?

15 A. Yes, sir.

16 Q. They are gathering phone calls and photographs and video
17 and trying to make sense of it; right?

18 A. Yes.

19 Q. Look at 312, please, sir.

20 A. Are we going to put it up? Which volume?

21 Q. It's from -- the middle one is from David Truitt, Sushovan
22 Hussain and Stouffer Egan.

23 THE COURT: Admitted.

24 (Trial Exhibit 312 received in evidence)

25 \\\

1 **BY MR. KEKER:**

2 **Q.** And at the bottom, your email dated November 2, 2009 --
3 which is about two months before the acquisition; right?

4 **A.** Yes.

5 **Q.** (Continuing) -- says, "Hi, Sushovan, you had asked me to
6 put together a few thoughts on how to deal with the potential
7 issues related to the proposed transaction. Issues identified
8 included current cleared contracts, novation issue," and the
9 jury can read the rest of it.

10 Let's start with that one. What does that mean, "current
11 cleared contracts, novation issue"?

12 **A.** When companies are acquired, sometimes the contracts that
13 you own or you're working on have to be novated over to the
14 acquiring company by the contracting officer within the agency
15 that you're working with.

16 So that -- sometimes they will novate it over to the new
17 buyer and sometimes they won't.

18 **Q.** So the concern was that an acquisition could lead to the
19 loss of a lot of MicroLink's contracts?

20 **A.** Yes. Especially if you weren't going to be handling it
21 the way we ended up handling it in terms of the firewall and
22 security clearances and so forth.

23 **Q.** And the next concern -- the next issue was facility
24 security clearance. What was that about?

25 **A.** Well, again, we're just having early discussions, so the

1 question is, you know, are we going to be the facility security
2 clearance for Autonomy or are they going to try to go after
3 that as a company in some other manner? You know, we were
4 still trying to figure out how to organize.

5 Q. On the next page, the type changes. Do you see at the
6 top, the same type, "The purchase of MicroLink in its entirety.
7 I had discussion today with attorneys who specialize" and then
8 there is some bigger type.

9 What's going on there in that email? Is somebody
10 answering these questions?

11 A. It looks like, again, we were -- we were trying to
12 determine whether MicroLink would just become part of Autonomy
13 or whether we needed to keep it as a subsidiary and if so,
14 keeping it separate like that could, you know -- could be an
15 advantage to deal with some of these security-related issues.

16 Q. And can we highlight No. 4, the first sentence.

17 "In listening to you and Stouffer in our discussion on
18 Friday, it became evident that you were looking for a fresh
19 solutions-based approach to the federal space."

20 What does that mean?

21 A. Is this the -- what -- which meeting are we -- are we
22 referencing here? Was it just --

23 Q. Well, if you --

24 A. It was --

25 Q. Look in your book. You can look at the whole thing. 312

1 in Volume 1. You don't have to look on the screen. You can
2 look at the hard copy.

3 You tell me.

4 **A.** 312?

5 **Q.** Yes.

6 **THE COURT:** What is the date of the document?

7 **MR. KEKER:** The date of document, Your Honor, is
8 November 9 -- well, the one we're talking about is November 2,
9 2009.

10 **THE COURT:** November 2, 2009.

11 **MR. KEKER:** That's the middle email. The top email is
12 also November 2, 2009.

13 **THE WITNESS:** All right.

14 So the meeting that is being referenced was the meeting
15 that me and Mr. Rizek had with Mr. Egan and Mr. Hussain.

16 And could you repeat your question, please?

17 **BY MR. KEKER:**

18 **Q.** My question is what does that first sentence mean? It
19 became evident that you were looking for fresh solutions-based
20 approach to the federal space.

21 **A.** So I believe that would just mean more of a full-blown
22 solutions approach so that we could leverage other -- other
23 platforms like Microsoft who was a big partner of -- of
24 MicroLinks at the time.

25 So rather than just going in and trying to sell IDOL by

1 itself, let's blend IDOL into SharePoint or other technologies
2 and take a solutions-based approach to that -- to the intel
3 community, to the DOD.

4 So a different approach than their current approach to
5 sales.

6 Q. If we could go back to the first page of this exhibit and
7 the top email. This is from Mr. Hussain to Mr. Egan, and in
8 the second paragraph, he's talking about valuation, but he's
9 also saying, "and a cleared facility is very strategic for us."

10 You knew that that's what he thought, didn't you?

11 A. Yes.

12 Q. Now, at the time of the acquisition, Autonomy was owed
13 money by MicroLink; correct?

14 A. Yes.

15 Q. Do you know how much they were owed?

16 A. I think we saw yesterday, it was around 22 million,
17 somewhere in that range.

18 Q. Do you know how much of that was not yet due under the
19 terms of the agreements?

20 A. I don't know all of it, but I do know that the largest
21 piece of it, which was our EDD purchase, which was over
22 \$8 million, was -- was not all due and was not going to be due
23 for another year or two. It was -- it was kind of in the
24 middle of the -- we had very long terms for that segment.

25 In terms of the other ones individually, I couldn't tell

1 how much were overdue.

2 Q. Would it surprise you that of the 23 million, more than
3 16 million was not due?

4 A. It wouldn't surprise me.

5 Q. And would it surprise -- and that more than -- or almost
6 7 million was due for less -- had been due for less than 30
7 days?

8 A. No. It wouldn't -- wouldn't surprise me.

9 Q. You were the president or the CEO of MicroLink for a year
10 while it was owned by Autonomy; right?

11 A. Yes, sir.

12 Q. Did Autonomy keep -- did MicroLink, once it was in
13 Autonomy, continue to collect money and pay MicroLink back --
14 excuse me -- pay Autonomy back?

15 A. I know that there were some efforts to do that, yes.

16 Q. Did they pay -- was about 18 of that 23 million paid back
17 after the acquisition?

18 A. I couldn't tell you for sure. I know some was paid back.
19 I don't -- I couldn't tell you whether it was 18 or not.

20 Q. The acquisition didn't wipe out the debt, did it?

21 A. We were actively trying to sell and collect money around
22 those deals. In terms of how it was accounted for and
23 whether -- you know, I'm not sure that we were on the hook for
24 it, necessarily, but we were actively trying to solve the
25 issue.

1 Q. But Autonomy collected money on most of those deals,
2 didn't they? About 18 million?

3 MR. LEACH: Objection. Asked and answered.
4 Foundation.

5 THE COURT: Sustained.

6 THE WITNESS: Again, I --

7 BY MR. KEKER:

8 Q. You don't have to -- the judge sustained the objection.

9 A. Sorry.

10 Q. Let me ask you this: Of the 66 million total debt over
11 time that MicroLink had accumulated with Autonomy, 61 million
12 of that was collected by Autonomy, wasn't it?

13 A. I can only say I know a lot of it was collected.

14 Q. Okay. And part of it -- the part that wasn't collected
15 was this \$2.3 million that we started this examination with?
16 That was written off?

17 A. I -- yeah. I can't say specifics.

18 Q. Let me ask some questions about the ATIC.

19 What does ATIC stand for?

20 A. Advanced Technology Innovation -- I'd have to look it up.
21 Sorry.

22 Q. Tell us about Dr. Channing. What is his background and
23 education?

24 A. Well, he is a doctor, and he was, when I met him, I guess,
25 just leaving CSC where he was employed for a relatively long

1 period of time.

2 He was an expert in building and running data centers.
3 That's what his passion was. That's, you know -- I -- I
4 interviewed him one time before I referred him over to
5 Mr. Jimenez, so I don't have a lot of information on
6 Mr. Channing, but I was certainly impressed with him when I met
7 with him.

8 Q. Who did the negotiation -- you said that you carried the
9 proposal up to a dinner meeting you had with Mr. Hussain and
10 Mr. Scott when you told Mr. Hussain you were leaving. But you
11 didn't talk about the --

12 A. Yeah. I didn't carry it. I mean, they had it. It was
13 forwarded to them days before.

14 Q. Who carried out the negotiation for how much Autonomy
15 would pay for MicroTech building and servicing that data
16 center?

17 A. As I recall, there were several proposals that went back
18 and forth. I think Mr. Cronin was involved in terms of helping
19 to generate those, so, you know, it was really -- it was really
20 more "here are some options that are available," and I believe
21 at the end of the day, they selected one.

22 Q. And who negotiated on the Autonomy side for how much they
23 were going to pay?

24 A. I recall that Mr. Scott was involved and I just assumed
25 that Mr. Hussain ultimately would have made that decision, but

1 I can't say with a hundred percent certainty.

2 Q. You know Scott was involved. You don't know what
3 Mr. Hussain's role was?

4 A. Correct.

5 Q. Could we see 1320 that's in evidence, page 29. The jury
6 saw this earlier. And if we can blow up the bottom down here
7 so it's a little easier to see.

8 These were the choices. There could be -- the choices
9 that were presented were two years, base year, three years, and
10 so on. And at the very bottom, there's prices, but at the very
11 bottom, they're talking about the discount, how much of a
12 discount you get if you take it for one year -- go up to the
13 top, Jeff, if you would, so that we can see.

14 So there's Base Year, Year 2, Year 3, Year 4, Year 5.
15 Good.

16 And so the base year, you get a discount of almost -- of a
17 little bit more than 11. Year 2, discount is less than 9.

18 What's the highest discount that you get?

19 A. Year 3, 16.77 percent.

20 Q. That's the one Mr. Scott picked?

21 A. Yes. Or someone picked.

22 Q. And you believe that the -- this was fairly priced, don't
23 you?

24 A. I do.

25 Q. Okay. And you know that this was built?

1 A. Yes.

2 Q. You've seen it?

3 A. Yes.

4 Q. Where -- MicroTech's offices are in the same office as
5 MicroLink used to be?

6 A. That's correct.

7 Q. And were -- is it the same office as Discover Tech?

8 A. No.

9 Q. Was Dr. Channing's facility that he built on the ground
10 floor of the MicroTech office building?

11 A. Yes.

12 Q. Was there a grand opening in July of 2011?

13 A. Yes.

14 Q. Were you there?

15 A. I was.

16 Q. Were there hundreds of people there?

17 A. I don't know if there were hundreds, but it was
18 well-attended. There were -- there were -- had to be at
19 least -- at least 50 or so, as I recall, but, you know, I think
20 it was kind of open, so it could have been running all day.
21 But there were a lot of people there.

22 Q. And were some of them, at least, from the federal
23 government, procurement people from the federal government?

24 A. I'm sure. They -- they -- you know, that's who we were
25 targeting, so I wasn't involved in -- in inviting people there.

1 I attended.

2 **Q.** Some general questions about the at risk sales.

3 You've been shown here a lot of documents, and they have
4 Stouffer Egan's name on them, they have Joel Scott's name on
5 them, they have Mr. Cronin's name on it, Mr. Rizek, Mr. Hyson.

6 Not many of what you have been seeing are documents that
7 Mr. Hussain is on, are they?

8 **MR. LEACH:** Objection. Counsel is testifying.
9 Mischaracterizes the evidence.

10 **THE COURT:** Sustained.

11 **BY MR. KEKER:**

12 **Q.** You said that these reseller deals were at risk and you
13 explained to us what you meant.

14 Let me ask you about collectability. You were asked a lot
15 of questions about your bank account.

16 You were paid, when the acquisition of MicroLink happened,
17 \$39 million; right?

18 **A.** Yes, sir.

19 **Q.** You could fund your Discover Tech business to the extent
20 that you wanted to; right?

21 **A.** Correct.

22 **Q.** And Mr. Wharton could help you. He had 20 percent. He
23 had money. He could put in what he wanted to?

24 **A.** Yes.

25 **Q.** The fact that there is no money in the bank account didn't

1 mean that you couldn't make good on your promise to pay what
2 you owed; right?

3 A. That's correct.

4 Q. And, in fact, Discover Tech, when it started as a
5 reseller -- Autonomy, being concerned about collectability,
6 insisted on some down payments; right?

7 A. Yes.

8 Q. So for the first deal, the Citi and the Philip Morris
9 deal, you had to put down \$2 million prepayment, basically?

10 A. Yes. That's correct.

11 Q. To let -- you had to have some skin in the game?

12 A. Yes.

13 Q. You couldn't just get credit out.

14 And for the Bank of America deal, you had to put down a
15 million?

16 A. Yes.

17 Q. And then some questions about -- you keep asking
18 about control, who controlled what. And your answers were,
19 "The documents we signed were the terms of the agreement. The
20 terms are stated in the agreement." Do you remember that
21 testimony?

22 A. Yes.

23 Q. And is what you meant is that once you made the agreement,
24 you, be it Discover Tech, MicroTech, whoever made the
25 agreement, owned the software? It was your software?

1 A. Yes.

2 Q. And was -- if it didn't close, it's still your software
3 and you owed money; right?

4 A. Yes.

5 Q. If you sold it to the end user, the terms were already
6 set. It was there in the agreement; right?

7 A. Correct.

8 Q. So you had control of the software, you owed the money,
9 and you were fully the owner; right?

10 A. Yes.

11 Q. In the first deal, the Citi deal, did Mr. Cronin make a
12 lot of efforts to get involved with Citi?

13 A. He definitely reached out to -- to procurement folks that
14 we were referred to. He -- you know, there was a vendor list
15 that we were attempting to try and get on. So there were
16 conversations that he was having with some folks within Citi.

17 Q. One of the reasons that Discover Tech wanted to be the
18 reseller on this Citi deal was that you hoped that it would
19 lead to sales of software and services with Citi?

20 A. Yes. That's correct.

21 Q. And a small company getting a relationship with a big
22 company like Citibank would be an advantage, as far as you were
23 concerned?

24 A. Absolutely.

25 Q. And that's why you wanted to be a reseller on the deal?

1 A. Yes. That was very enticing to us.

2 Q. What Mr. Cronin eventually learned that -- to become an
3 approved vendor for Citi was a very cumbersome and
4 time-consuming process; right?

5 A. Yes.

6 Q. But still Autonomy tried to use or did use Discover Tech
7 as the payment agent, let you have -- so you had some role in
8 the deal?

9 A. My recall is that the -- I know there was some talk about
10 payment agent, but I believe that what -- what happened was
11 they simply dealt directly with Autonomy and Autonomy collected
12 the -- the cash.

13 Q. You were shown an email earlier -- and I'm not going to
14 pull it up again because I can't remember what the number is,
15 but it's in evidence -- that said that Discover was going to
16 collect the cash and pay Autonomy?

17 A. Yeah. I don't think that ended up happening.

18 Q. Let's talk a little bit about the Dell Hyatt and Abbot
19 Labs deals in the third quarter of 2011.

20 Again, this is all Mr. Egan. Mr. Egan came in and
21 convinced you to do it; right?

22 A. Yes.

23 Q. Told you that these deals were about to close?

24 A. Yes.

25 Q. Told you that these were long-term customers of Autonomy

1 who were going to have to buy eventually --

2 A. Yes.

3 Q. -- right?

4 And persuaded you that this was something that you wanted
5 to do?

6 A. Yes.

7 Q. And to the extent that -- you didn't talk to Mr. Hussain
8 about the Abbott deal, did you?

9 A. No.

10 Q. Mr. Egan didn't tell you that the -- they were having
11 problems getting the general counsel to agree to a license?

12 A. No.

13 Q. Okay. Did you know that eventually they did get Abbott to
14 agree to a license?

15 A. No.

16 Q. But, again, these were deals that you accepted the risk on
17 and you owed the money on?

18 A. Yes, sir.

19 Q. Some questions about sales of your product, DiscoverPoint.

20 You sold DiscoverPoint to Autonomy both in the first
21 quarter of 2011 and in the third quarter of 2011; right?

22 A. I believe we're talking about DiscoverEngine.

23 Q. Okay.

24 A. But, yes.

25 Q. DiscoverEngine was a Discover Tech product?

1 A. Yes, sir.

2 Q. And you were selling it in the first quarter of 2011 --
3 excuse me -- yeah, 2011 and the third quarter of 2011 to
4 Autonomy?

5 A. I -- I think -- I think the first agreement for that
6 software was -- was in the second or third quarter of 2011.

7 Q. In any -- this is a product that you thought had advanced
8 features that Autonomy's solutions did not have?

9 A. Yes.

10 Q. And you were selling it to companies like Lockheed Martin?

11 A. Yes.

12 Q. Allstate Insurance?

13 A. Yes.

14 Q. GlaxoSmithKline?

15 A. Yes.

16 Q. You sold it to NATO?

17 A. Different product, but, yes.

18 Q. You sold to Johns Hopkins, the university?

19 A. Again, we're mixing products here, but they were all in
20 our product sale list.

21 Q. What was it you sold to Tech Resources?

22 A. That was DiscoverPoint.

23 Q. Okay. And for DiscoverPoint, the prosecutors made a point
24 of saying that you -- you sold for 4,000 users for \$213,000;
25 right?

1 A. Yes.

2 Q. And tell the jury again what an instance is.

3 A. An instance for DiscoverEngine is really how many servers
4 were going to apply to a problem. So if Lockheed Martin, who
5 we sold that product to, or GlaxoSmithKline has a ton of data,
6 Autonomy at the time could only apply one server at a time to
7 crawl through all of that information, understand it, and put
8 it into the IDOL server index.

9 So ours was what we call distributable. So if a customer
10 wanted to buy 15 instances, then they could rip through and
11 make that process much quicker.

12 The other advantage that we -- other major advantage that
13 we had with that product over Autonomy at the time was that we
14 were certified with Microsoft in their Cloud environment, which
15 was called BPOS at the time, and that meant that our indexes
16 could live in Microsoft's Cloud. They had certified us for
17 that purpose.

18 So GlaxoSmithKline, who wanted to crawl their Cloud-based
19 SharePoint, could use our product, where Autonomy's product
20 would not have been able to be used.

21 Q. So one instance for GlaxoSmithKline could be as many as
22 4,000 users, couldn't it?

23 A. Well, it really has nothing to do with users. It's all
24 about the servers and the instances.

25 So it's really apples and oranges. We wouldn't sell that

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1 product by the user. We sell it by the instance.

2 So to give you some perspective, though, we sold to Glaxo
3 and to Lockheed Martin -- an instance cost \$25,000. The deal
4 that we ended up cutting with Autonomy averaged \$5,000 per
5 instance.

6 **Q.** All right. So as far as you're concerned, Autonomy got a
7 good deal on the --

8 **A.** Not only did they get a good deal, but they were not any
9 other customer. They were the manufacturer of the software
10 that we were trying to support. So they had all of the
11 Autonomy customers that they could go and give this solution
12 to.

13 **MR. KEKER:** Could I have just a moment, Your Honor, to
14 check?

15 (Pause in proceedings.)

16 **MR. KEKER:** Thank you, Mr. Truitt. I have no further
17 questions.

18 **THE COURT:** Redirect.

19 **MR. LEACH:** Thank you, Your Honor.

20 **REDIRECT EXAMINATION**

21 **BY MR. LEACH:**

22 **Q.** Good afternoon, Mr. Truitt. You were asked a number of
23 questions about the meeting in San Francisco with Mr. Hussain
24 and Mr. Egan. Do you recall that testimony?

25 **A.** Yes, sir.

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1 **Q.** And do you recall in that meeting making it clear to
2 Mr. Hussain you believed the Prisa order had been backdated?

3 **A.** Yes. I was very clear that I was concerned about the way
4 that it occurred.

5 **Q.** Okay. Did he deny that it had been backdated?

6 **A.** I don't think he denied that it had been backdated. I
7 think he was explaining -- what he did was explained from his
8 perspective the differences between accounting under GAAP and
9 IFRS.

10 **Q.** Did he say Mr. Egan had acted contrary to instructions?

11 **A.** No. No. He made me feel like we were -- we were okay and
12 that things were being accounted for properly.

13 **Q.** Well, did he look at Egan and say what were you doing on
14 this?

15 **A.** No.

16 **Q.** Anything like that?

17 **A.** No.

18 **Q.** Did you make reference to Prisa?

19 **A.** Yes.

20 **Q.** Did he say "I don't know what Prisa was"?

21 **MR. KEKER:** Objection. Leading, Your Honor.

22 **THE COURT:** I'll allow it.

23 **THE WITNESS:** I specifically talked about Prisa and
24 specifically the deal that we had just -- had just done. You
25 know, again, I was not wanting to sign off on an audit letter

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1 for that specific deal. So we did talk about my concern.

2 **BY MR. LEACH:**

3 **Q.** Had you agreed to purchase \$3.6 million of software from
4 Autonomy to resell to Prisa on March 31st, 2011?

5 **A.** I can't say that I had agreed to -- to purchase software
6 on March 31st. I can say that we may have discussed that as an
7 option.

8 **Q.** You saw it on a slate of deals, possibly?

9 **A.** Yes.

10 **Q.** But you don't have a memory?

11 **A.** Correct.

12 **Q.** We talked briefly about the relationship between MicroLink
13 and Autonomy after the acquisition. Do you recall that
14 testimony?

15 **A.** Yes.

16 **Q.** Was there anything prohibiting you from picking up the
17 phone and calling Sushovan Hussain during this time period?

18 **A.** There was a process that we had to follow, but there was
19 no reason that we could not have discussions.

20 **Q.** And you had discussions with Mr. Egan about commercial
21 deals all the time; isn't that fair?

22 **A.** Yes. And -- and there were -- there were -- there were
23 different rules for -- for different executives. There were --
24 you know, obviously we couldn't have had dinner in New York if
25 we hadn't been allowed to talk at all. We just had to get the

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1 meeting blessed by our facility officer, security officer.

2 Q. Who was that?

3 A. Her name was Amy Solan.

4 MR. LEACH: Could we please display Exhibit 1293,
5 which is in evidence. Excuse me. If we could please start
6 with 1292.

7 Q. I want to go back to this issue of profiling, Mr. Truitt.
8 Do you recall a number of questions about whether you did agree
9 or didn't agree to buy profiling?

10 A. Yes.

11 Q. And you were shown this email, which is dated December 16,
12 2010, from Mr. Cronin to you. Do you see that?

13 A. Yes.

14 Q. And the subject is "Recommendation paper attached." Do
15 you see that?

16 A. Yes.

17 Q. Now, is Discover Technologies a public company?

18 A. No.

19 Q. Did it have audited financial statements?

20 A. No.

21 Q. You had a tax accountant; is that right?

22 A. Yes.

23 Q. What were your tax accountant's -- what was your
24 relationship with your tax accountants?

25 A. They would really just do our taxes. That was their role

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1 at that time.

2 Q. Okay. And if we could -- and this is an email between you
3 and Mr. Cronin, not the tax accountants; is that fair?

4 A. Yes.

5 Q. Can we please look at page 2.

6 Could we please now go to document 5739, which is in
7 evidence. If we could please go to the top.

8 Is this another email from Mr. Cronin to you relating to
9 this build/buy approach relating to profiling?

10 A. Yes.

11 Q. And this is an email between you and Mr. Cronin, right,
12 not the tax accountants?

13 A. Yes.

14 Q. Let's look at the attachment, please. And what is the
15 amount in the attachment?

16 A. 10,100,000.

17 Q. That's roughly the purchase of the -- all the ControlPoint
18 software that you acquired on December 30th, 2009; is that
19 right?

20 A. Yes.

21 Q. Do you have any reason to believe this particular piece of
22 paper was shared with your tax accountants? Do you have a
23 memory of that?

24 A. I don't know why it would have been. They had the
25 records. You know, they had our -- they had our financial

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1 records, so they knew how much we paid for the software.

2 Q. Is this a draft? Do you have a memory of it?

3 A. I do not have a memory of this.

4 Q. Let's look at what was sent to the tax accountants. Can
5 you look at what's marked as 1293, which is in evidence.

6 Who is Cassie Hartogs?

7 A. She was our -- kind of our head accountant, and at the
8 time -- I said BDO, but BDO had bought this Argy Wiltse &
9 Robinson company, so she was an accountant.

10 Q. What was she doing for you?

11 A. She was determining how the software that we purchased
12 would be depreciated over time. And at issue, I believe -- the
13 only real issue is whether this was -- is whether this was a --
14 an agreement that would allow us to sell it to others or
15 whether this was infrastructure software that was used to run
16 our internal business.

17 So the case that we're making here is simply to have her
18 understand that this is an OEM software and so that we would
19 have it accounted for and depreciated properly on our books.

20 Q. Did this relate at all to revenue recognition?

21 A. No.

22 Q. Please look at page 9 of the exhibit.

23 Is this a signed version of an OEM agreement between
24 MicroTech and Discover Tech in relation to the licensing of
25 certain software?

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1 A. Yes.

2 Q. Now please look at page 11.

3 What's the software listed there?

4 A. It's IDOL Server with Retrieval Lite SharePoint connector.

5 So the same software that we had purchased through MicroTech.

6 Q. But not the profiling software?

7 A. Yes.

8 Q. Now please look at page 17.

9 What is the amount of this order?

10 A. 10,100,000.

11 Q. And what is the licensed software on the next page?

12 A. Same. It's what we purchased from MicroTech.

13 Q. Not the profiling?

14 A. Not profiling.

15 Q. And sitting here today, are you aware of any documents
16 going to the auditors or your accountants relating to that
17 profiling software?

18 A. I'm not aware.

19 Q. Let's go back to the \$2.3 million order. It's Exhibit
20 420.

21 Do you recall questioning about this, Mr. Truitt?

22 A. Yes.

23 Q. I draw your attention to the date, December 31st, '09 up
24 at the top.

25 Did you, Mr. Truitt, have any reason to backdate a

1 purchase order into December of 2009?

2 **A.** No.

3 **Q.** What reasons can you think of to backdate a \$2.3 million
4 purchase order into that quarter?

5 **MR. KEKER:** Objection, Your Honor.

6 **THE COURT:** Sustained.

7 **BY MR. LEACH:**

8 **Q.** What was the concern that you had relating to Prisa?

9 **A.** I was concerned that it was an order that was done after
10 the end of the quarter and backdated.

11 **Q.** To what consequence would that have for your revenues?

12 **A.** None.

13 **Q.** What consequence would it have for Autonomy's revenues?

14 **A.** It would allow them to report earnings for that quarter
15 that would help their numbers.

16 **Q.** Did this \$2.3 million order allow you to report earnings
17 in a particular quarter?

18 **A.** No.

19 **THE COURT:** How much longer?

20 **MR. LEACH:** I think about five minutes, Your Honor.

21 **THE COURT:** Okay. Well, I will ask the jury to
22 indulge us because the witness will be excused after that.

23 **MR. LEACH:** Thank you, Your Honor.

24 **THE COURT:** Subject to examination.

25 Okay. Go ahead.

1 **BY MR. LEACH:**

2 **Q.** With respect to the Prisa order, are you aware of any
3 documents before March 31, 2011, relating to that order?

4 **A.** No.

5 **Q.** Was there any back and forth between Mr. Egan and
6 Mr. Scott that you're aware of prior to April 4th, 2011,
7 relating to that Prisa order?

8 **A.** Information going between those two that I'm aware of?

9 **Q.** No. Between you and them.

10 **A.** Oh, no.

11 **Q.** With respect to Bank of America, ThinkTech, Abbot Labs,
12 Dell Hyatt, FINRA, you didn't sell the software to those
13 customers, did you?

14 **A.** No.

15 **Q.** You didn't deliver any software to those customers, did
16 you?

17 **A.** No.

18 **Q.** You didn't set the price for that software with them, did
19 you?

20 **A.** No.

21 **Q.** You didn't set the terms?

22 **A.** No.

23 **Q.** And you didn't set the delivery -- you didn't deliver
24 anything to them?

25 **A.** No.

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1 **Q.** And when it didn't sell, it got taken care of; isn't that
2 right?

3 **A.** Well, yes. We generally -- we figured out ways to meet
4 our obligations.

5 **Q.** And that became a practice over time, did it not?

6 **A.** There certainly were several -- several items that were --
7 that helped us meet those obligations.

8 **Q.** And at the time, the reason you're not trying to resell
9 the software is because you understood Autonomy had control
10 over what to sell, when, and at what price; isn't that right?

11 **MR. KEKER:** Objection. Compound question and
12 argumentative.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** My feeling with those commercial deals
15 was that they were set. Many were -- many were existing
16 customers. There simply wasn't a lot for us to do.

17 I would have been happy to do anything. I would have been
18 happy to go meet with any of these companies because that would
19 have helped me.

20 But where we were with those deals, there really wasn't
21 anything for us to do. We did not do anything. We were hoping
22 that the customers would close and then we would be able to go
23 in and meet and, you know, talk to them about how we could help
24 them.

25 **THE COURT:** I think this has been covered.

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1 **MR. LEACH:** Thank you, Your Honor. May I have one
2 moment?

3 (Pause in proceedings.)

4 **MR. LEACH:** That's all I have, Your Honor. Thank you
5 very much.

6 **MR. KEKER:** Less than a minute, Your Honor.

7 **THE COURT:** Less than one minute.

8 Less than one minute, ladies and gentlemen.

9 **RECROSS-EXAMINATION**

10 **BY MR. KEKER:**

11 **Q.** You said there was no back and forth with Egan or Scott
12 about Prisa before the end of the quarter, but there was a lot
13 of back and forth with Egan and Scott about a slate of deals;
14 right?

15 **A.** We did have conversations regarding the end of quarter
16 slate of deals, yes.

17 **Q.** And Prisa -- you've testified Prisa may have been part of
18 that discussion?

19 **A.** Yes.

20 **MR. KEKER:** Thank you.

21 Nothing further, Your Honor. Less than a minute.

22 **THE COURT:** And my suggestion is since you're excused,
23 I'd leave.

24 Ladies and gentlemen of the jury, we are going to take our
25 recess now. As you know, we're not meeting tomorrow, but we

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1 will meet on Monday. Bring a snack or something that you can
2 get through the morning if the food isn't adequate there, which
3 it may not be. So I'll see you on Monday.

4 Don't form or express any opinions, allow anyone to
5 discuss the case with you.

6 Thank you very much. You can leave your pads in the jury
7 room.

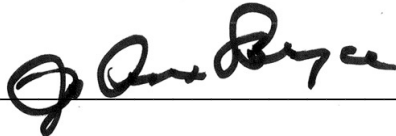
8 (Proceedings adjourned at 4:11 p.m.)

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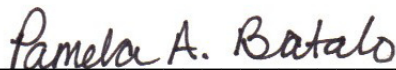
10
11 CERTIFICATE OF REPORTERS

12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled matter.
14

15 DATE: Thursday, March 8, 2018
16
17

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19 

20 Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
21 U.S. Court Reporter

22
23 

24 Pamela A. Batalo, CSR No. 3593, RMR, FCRR
25 U.S. Court Reporter